(21,112.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 129.

J. W. FRELLSEN AND COMPANY, A PARTNERSHIP COMPOSED OF JOSEPH W. FRELLSEN AND JAMES D. HILL, PLAINTIFFS IN ERROR,

vs.

A. W. CRANDELL, REGISTER OF THE STATE LAND OFFICE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 23, 1909.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 16771.

J. W. FRELLSEN AND COMPANY, Plaintiffs in Error,

versus

A. W. CRANDELL, Register, and OTHERS, Defendants in Error; BOWMAN-HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILLION DEVELOPMENT COMPANY, Mrs. A. M. GUEYDAM ET AL., Intervenors, Defendants in Error.

Morgan & Milner, for Plaintiffs in Error.
Walter Guion, Attorney General, for Defendants in Error.
McCoy & Moss, Hollander & Hollander, Pujo, Moss & Sugar, Hall & Monroe, and Titche & Rogers, for Intervenors, Defendants in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the thirtieth day of March, A. D. 1908.

TRANSCRIPT OF RECORD.

1 *Petition for Injunction.*

To the Honorable the Judge of the Twenty Second Judicial District Court, for the Parish of East Baton Rouge, State of Louisiana:

The Petition of J. W. Frellsen & Company, a co-partnership, composed of Joseph W. Frellsen and James D. Hill, and of said Joseph W. Frellsen and James D. Hill, all residents of the City of New Orleans, Louisiana, and domiciled therein, with respect represents:

That by donation made, under act of Congress entitled "An Act to aid the State of Louisiana in draining the Swamp lands therein," Approved March 2d, 1848, and under another act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28, 1850, title was vested in the State of Louisiana to "the whole of those swamp and overflow lands which may be or are found unfit for cultivation" within her borders.

Petitioner represents that the hereinafter described lands were embraced in said grants, as appears from the lists made pursuant to Section 2 of said act, approved March 2d, 1849, and duly recorded in the Books of Conveyances for the various Parishes of this State.

Now, your petitioner avers that the Legislature, in the year 1880, passed an act authorizing the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to

the State by the Federal Government, or to recover the value of said lands in money or scrip, the provisions of which act, known as act 23 of 1880, are as follows, to-wit:

"SEC. 1. Be it enacted by the General Assembly of the State of Louisiana, That the Governor of the State be and he is hereby authorized to take the necessary steps to institute proceedings, to employ counsel and to make the necessary agreement or agreements to recover for the State lands situated in the State of Louisiana, and donated by several Acts of Congress to the State for divers purposes; some of which has been illegally disposed of by the Federal Government, and other portions, though listed to the State, have been improperly suspended or rejected by the Federal Government, and the approval to the State refused, or to recover the value of said lands in money or government scrip; *provided* that the State shall incur no cost or expense in the prosecution of said claims other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered. The Governor is specially
2 authorized herein to make all agreements or contracts to carry out the purposes of this act.

"SEC. 2. Be it further enacted etc., That any settler under or holder of a patent from the Land Office of the United States or purchaser of same, under existing laws, shall not be in any manner affected by this resolution."

Petitioner further avers that on the 20th of March, 1880, the foregoing act having been signed and approved on March 8th, 1880, Louis A. Wiltz, then Governor, entered into a written contract with John McEnery in which the following, among other stipulations, are found, viz:

"*First:* That John McEnery 'promises and agrees to employ his diligent and best efforts to recover for the State all land donated to her by the General Government as Swamp lands, and which have been improperly suspended or rejected by the United States Government; and all lands to which the State had valid claims, and which have been sold or otherwise disposed of by the United States, to the prejudice of the State, or to recover the value of lands in money or scrip, to be paid or issued by the United States, in lieu of lands sold, or otherwise disposed of by the government of the United States, to which the State had valid claims, including therein the claims of the State upon the General Government for lands of their value, for school purposes; for the amounts in money due the State, by virtue of the acts of Congress in relation to Military bounty land Warrants, or other location, and also for internal improvement purposes."

"*Second:* The State of Louisiana, on her part, agrees to pay John McEnery fifty per centum of the land, money or scrip recovered, to be paid as provided in said act 23.

Where *lands in kind* are recovered, the compensation as aforesaid, of the said McEnery, shall be represented in scrip or certificates, to be issued by the Register of the Land Office of the State, *and locatable upon any lands owned by the State.*"

The foregoing provisions are taken from a contract with John

McEnery, a copy of which is attached to and made a part of this petition.

Petitioner avers further than when he incorporated into the agreement the last clause of article 2 of said contract with said John McEnery, Governor Wiltz exceeded the authority conferred upon him by the act, it being contrary to its plain and unambiguous requirements that where lands in kind were recovered, the compensation of said John McEnery should be out of said lands, as set forth in these words: "*Provided*, that the State shall incur no cost or expense in the prosecution of said claim *other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered.*"

3 Petitioner avers that the interpolation of the last clause in the contract with said John McEnery was *ultra vires* of the Governor, illegal, null and void, and conveyed to the Register of the Land Office no right to issue to said John McEnery certificates locatable upon any lands owned by the State; that the illegal agreement and the issuance of scrip thereunder was a fraud upon the State in that it was an attempt, by the issuance of spurious scrip to substitute for the more or less worthless lands recovered by McEnery, under his contract, valuable lands already owned by the State, and in no manner connected with or recovered under the said contract; and that the Register of the State Land Office had no right, power or authority to issue or sign any such certificates as said illegal clause in said contract contemplated should be issued and signed by him.

Petitioner avers that by act 106 of 1888, the said Act No. 23 of 1880 was repealed, and that Section 2 of the repealing Act provides "That the act or agreement made between Louis A. Wiltz Governor of the State, and John McEnery, made March 20th, 1880, purporting to be under authority of said act No. 23, is hereby abrogated and terminated;" and that this repealing act took effect January 1st, 1889.

Now, your petitioner avers that the Register of the State land Office, acting under the provisions of this illegal and void contract, and without power, right or authority under any law of this State so to do, issued to the said John McEnery a large number of the certificates, the issuance of which was provided for only in and by said illegal clause contained in said contract, covering in the aggregate a vast acreage, which certificates were made locatable upon any vacant land granted to the State by Acts of Congress, approved March 2d, 1849, and September 28th, 1850; that these certificates were sold and assigned by the said John McEnery, whose assignees located them upon the public lands hereinafter described, which had not been recovered by said John McEnery under the contract en-

4 tered into by and between him and the then Governor of the State, for which patents were thereafter illegally and fraudulently issued to some of said assignees, while others stood upon their certificates.

Petitioner avers further that the hereinafter described lands were not embraced in the lands recovered by said John McEnery and were not recovered by him to the State under the aforesaid contract,

and that the issuance to him, as aforesaid, by the Register of the State Land Office, of said certificates as compensation for the recovery of other lands to the State, under the provisions of said contract, was illegal, null and void, and *ultra vires*, as neither the Governor nor the Register of the State Land Office had any right to issue or consent to the issuance of such certificates, and that said certificates conferred no right upon said John McEnery or his assignee in and to the lands located therewith; that the patents granted thereunder are null and void and *ultra vires* and neither the issuance of the certificates nor the granting of the patents had the effect of segregating the lands purported to be conveyed from the public domain.

That these certificates and these patents are absolutely null and void, and did not divest the interest and title of the State in or to said lands.

That the lands which they purport to convey never became segregated by such conveyance from the public domain, but remained subject, as such public lands to sale and entry, under existing laws, by the first applicant therefor.

Petitioners aver that, accepting the invitation of the State of Louisiana to make entry to its Public lands, they, on March 28th, 1905, made applications to Honorable A. W. Crandell, Register of the State Land Office, under the provisions of act No. 125 of 1902, amending and re-enacting Section No. 10 of act No. 75, approved April 17th, 1880, as amended and re-enacted by act No. 195 of 1898, to enter the following lands, which applications were as follows, to-wit:

5 No. —. S. E. ¼ of S. W. ¼—Sec. I, T. I. N. R. 3 W., 40.08 acres.

No. —. S. ½ of N. W. ¼—Sec. 8, T. 2 N. R. 3 W., 80.11 acres.

No. —. W. ½ of W. ½, Sec. 22; W. ½ of W. ½, N. W. ¼ of S. E. ¼, Sec. 27; S. E. ¼ of N. E. ¼, E. ½ of S. E. ¼, Sec. 28; E. ½ of E. ½, Sec. 33 in T. I. S. R. 3 W.—854.67 acres.

No. —. N. ½ N. W. ¼, S. W. ¼ of S. E. ¼, N. E. ¼, S. E. ¼ S. W. ¼, Sec. 31; S. E. ¼ N. E. ¼, E. ½ S. E. ¼ Sec. 32; W. ½ S. W. ¼ S. E. ¼ S. W. ¼, Sec. 33; T. I. S. R. 3 W.,—662.05 acres.

No. —. S. W. ¼ of S. W. ¼, Sec. 36; T. I. S. R. 5 W; S. E. ¼ of N. W. ¼, Sec. I; S. E. ¼ of N. W. ¼, Sec. 24; T. 2 S. R. 5 W.,—127.07 acres.

No. —. N. W. ¼ of N. E. ¼, Sec. 6 T. I. S. R. 6 W.—41.80 acres.

No. —. S. ½ Sec. 19; S. W. ¼ of N. E. ¼, N. W. S. E., N. W. ¼, Sec. 30; S. W. N. W., Sec. 29; N. W. N. W. Sec. 32, T. I. S. R. 7 W., 685.25 acres.

No. —. S. W. ¼ of N. W. ¼, N. ½ of S. ½ Sec. 29; E. ½ and S. W. ¼ of N. E. ¼, N. ½ and S. W. ¼ of S. E. ¼, S. W. ¼ sec. 33; N. W. ¼ of N. W. ¼, Sec. 34; T. I. S. R. 7 W. 781.39 acres.

No. —. N. W. ¼ of N. W. ¼, E. ½ of S. E. ¼, Sec. 2; N. ½ of N. E. ¼, Sec. 10; S. W. N. W., E. ½ of E. ½, W. ½ of S. W. ¼, N. W. ¼, Sec. 11; T. I. S. R. 7 W.,—632.31 acres.

No. —. S. W. S. E., N. W., W. ½ and S. E. ¼ of S. W. ¼, Sec. 3; S. ½ of N. E. ¼, Sec. 4; S. E. ¼ of S. W. ¼, Sec. 14, E. ½ of N. W. ¼ Sec. 23; S. W. ¼ of N. W. ¼, Sec. 24, T. I. S. R. 7 W.—560.09 acres.

No. —. N. E. ¼ of S. W. ¼, S. ½ of S. E. ¼, Sec. 23; N. W. ¼ of S. W. ¼, S. E. ¼ N. ½, Sec. 26, T. I. S. R. 7 W.,—638.50 acres.

No. —. N. ½ of S. E. ¼, N. E. ¼ Sec. 7; S. W. ¼ Sec. 8; N. E. ¼ of N. W. ¼, N. E. ¼ Sec. 17; W. ½ and S. E. ¼ of N. E. ¼. Sec. 21, T. I. S. R. 8 W., 719.40 acres.

No. —. W. ½ and S. E. ¼ of S. W. ¼, S. W. ¼ of S. E. ¼ N. W. ¼ Sec. 13; N. ½ and S. E. ¼ of S. E. ¼, Sec. 21, E. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, S. E. ¼ Sec. 24, T. I. S. R. 8 W.—762.45 acres.

N-. —. S. W. ¼, E. ½ of N. W. ¼, Sec. 28; E. ½ of S. E. ¼ Sec. 29; E. ½ sec. 32 T. I. S. R. 8 W., 640.95 acres.

No. —. N. E. ¼ of N. E. ¼, S. W. ¼ of N. E. ¼, Sec. 15, T. 2. S. R. I. W., 81.36 acres.

No. —. S. ½ of S. W. ¼, Sec. 32; W. ½ and S. E. ¼ of S. E. ¼, Sec. 34, T. 2 S. R. 2 W.,—203.89 acres.

No. —. S. E. ¼ of S. W. ¼, S. ½ of S. E. ¼, Sec. 31; S. ½ and N. E. ¼ of S. W. ¼, N. W. ¼ of S. E. ¼, Sec. 35; W. ½ of S. W. ¼, Sec. 36; T. 2 S. R. 2 W.,—371.98 acres.

No. —. W. ½ of W. ½, N. E. ¼ of S. W. ¼, Sec. 23; W. ½ of W. ½, Sec. 26, T. 2 S. R. 3 W.,—363.09 acres.

6 No. —. N. E. ¼ of N. E. ¼, N. E. ¼ of N. W. ¼, W. ½ of E. ½, Sec. 4; W. ½ of E. ½, Sec. 6, T. E. 2 S. R. 3 W.,—403.03 acres.

No. —. See secs. 1 and 24, T. 2 S. R. 5 W. See T. I. S. R. 5 W., Cer. 349.

No. —. N. W. ¼ of N. W. ¼, Sec. 20; N. W. ¼ of N. W. ¼ Sec. 29; N. W. ¼ of N. E. ¼, Sec. 30, T. 2 S. R. 6 W.,—121.36 acres.

No. —. W. ½ of S. E. ¼, Sec. 31, T. 2 B. R. 11 W., 79.83 acres.

No. —. S. W. ¼ of S. E. ¼, S. ½ of N. W. ¼, S. W. ¼, Sec. 32, T. 3 S. R. 2 W.,—284.29 acres.

No. —. S. ½ of N. E. ¼, N. W. ¼ sec. 1; N. W. ¼ of N. E. ¼, Sec. 2; N. W. ¼ of N. W. ¼ Sec. 5; N. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, Sec. 6, T. 3 S. R. 2 W.,—453.71 acres.

No. —. S. W. ¼ of S. W. ¼ Sec. 2 T. 3 S. R. 3 W.,—40.09 acres.

No. —. S. E. ¼ of N. E. ¼, S. W. ¼ of S. E. ¼, S. E. ¼ of S. W. ¼ Sec. 10; W. ½ and S. E. ¼ of S. E. ¼, S. E. ¼ of N. W. ¼, Sec. 36; T. 3 S. R. 3 W., 285.83 acres.

No. —. E. ½ of S. E. ¼, Sec. 33; W. ½ of N. E. ½, Sec. 21, T. 3. S. R. 3. W., 160.96 acres.

No. —. W. ½ of N. W. ¼, N. W. ¼ of S. W. ¼, Sec. 17; N. ½ of S. E. ¼, E. ½ of W. ½, Sec. 18; W. ½ of S. W. ¼ S. E. ¼ of N. W. ¼ Sec. 32; E. ½ of W. ½ Sec. 31 T. 3. S. R. 3 W., 642.70 acres.

No. —. W. ½ of W. ½, Sec. 13; E. ½ of E. ½, Sec. 14; W. ½ of N. W. ¼, W. ½ of N. E. ¼ S. E. ¼ Sec. 24, T. 3. S. R. 4 W., 642.33 acres.

No.—. S. W. ¼ sec. 24; S. W. ¼ of S. W. ¼, S. W. ¼ sec. 25; E. ½ of S. W. ¼, Sec. 35; N. W. ¼ sec. 36, T. 3 S. R. 4 W., 603.38 acres.

No. —. E. ½ of N. W. ¼, sec. 14, T. 3 S. R. 5 W., 82.35 acres.

No. —. S. ½ of N. W. ¼, Sec. 3; S. E. ¼ of N. W. ¼, S. W. ¼ of N. E. ¼, Sec. 14; S. W. ¼ of N. E. ¼, Sec. 24; T. 3 S. R. 7 W., 204.04 acres.

No. —. W. ½ of S. W. ¼, S. E. ¼ of S. W. ¼, Sec. 27 T. 3 S. R. 8 W.,—119.91 acres.

No. —. S. E. ¼ of S. E. ¼, Sec. 6, T. 3 S. R. 8 W., 39.99 acres.

No. —. W. ½ of S. W. ¼, sec. 18; W. ½ of S. W. ¼ sec. 19; N. W. ¼ W. ½ of N. E. ¼, Sec. 30 T. 3 S. R. 8 W., S. W. ¼ of S. E. ¼ N. E. ¼ of S. E. ¼, Sec. 10; N. ½ of S. ½, sec. 11 T. 3 S. R. 9 W.,—632.23 acres.

No. —. S. W. ¼ of N. W. ¼, Sec. 13, T. 3 S. R. 9 W.; N. ½ of S. E. ¼, Sec. 5; E. ½ of E. ½, sec. 18; S. E. ¼ of S. W. ¼, Sec. 25; N. E. ¼ of N. W. ¼, sec. 30; N. E. ¼ of N. W. ¼ sec. 31; N. E. ¼ of S. E. ¼ sec. 36, T. 4. S. R. R. 8 W.; N. E. ¼ of S. W. ¼, sec. 24; E. ½ of N. E. ¼, sec. 23, T. 4 S. R. 9 W.,—550.23 acres.

No. —. S. W. ¼ sec. 22; N. W. ¼ sec. 27; T. 3 S. R. 11 W.,—324.14 acres.

No. —. N. W. ¼ of N. W. ¼ sec. 13, T. 3 S. R. 12 W., 40.02 acres.

7 No. —. S. E. ¼ of N. W. ¼, E. ½ of S. W. ¼, sec. 4; W. ½ of N. W. ¼, N. E. ¼ of S. W. ¼, sec. 6; E. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, sec. 8, T. 4 S. R. 2 W.,—361.46 acres.

No. —. W. ½ of N. W. ¼ sec. 2; S. E. ½ of N. E. ¼, N. E. ¼ of S. W. ¼, sec. 3; S. E. ¼ of N. E. ¼, sec. 4; S. E. ¼ of S. E. ¼ sec. 14; E. ½ of S. W. ¼ sec. 15; S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, sec. 18; N. W. ¼ of S. W. ¼, sec. 19; W. ½ of N. W. ¼ sec. 22; W. ½ of N. E. ¼, E. ½ of N. W. ¼, W. ½ of S. E. ¼, E. ½ and S. W. ¼ of S. W. ¼, sec. 23; E. ½ of S. E. ¼, sec. 24; S. E. ¼ of N. E. ¼, sec. 25; N. W. ¼ of N. E. ¼, sec. 26; W. ½ of N. W. ¼ sec. 33, T. 4 S. R. 3 W.,—1161.92 acres.

No. —. N. W. ¼ of N. W. ¼, sec. 4, N. ½ of N. E. ¼, N. E. ¼ of S. W. ¼, sec. 5; N. W. ¼ of S. E. ¼; sec. 7; E. ½ of S. E. ¼, sec. 33, T. 4 S. R. 3 W.,—318.92 acres.

No. —. S. E. ¼ sec. 3; W. ½ of N. W. ¼, W. ½ of S. E. ¼, E. ½ of E. ½, sec. 9; N. W. ¼ sec. 15, T. 4 S. R. 3 W.—632.67 acres.

No. —. W. ½ and N. E. ¼ of N. E. ¼, E. ½ and S. W. ¼ of N. W. ¼ S. ½ sec. 4; E. ½ of S. W. ¼, sec. 5, T. 4 S. R. 3 W.,—641.47 acres.

No. —. S. E. ¼ sec. 5, E. ½ sec. 8; N. E. ¼ sec. 17; T. 4 S. R. 3 W.,—634.45 acres.

No. —. S. W. ¼ of S. W. ¼, sec. 5; N. W. ¼ of N. E. ¼, E. ½ of N. W. ¼, W. ½ and S. E. ¼ of S. W. ¼ sec. 6; W. ½ of N. W. ¼ W. ½ of S. W. ¼, E. ½ of N. E. ¼, Sec. 7; E. ½ of N. W. ¼, N. E. ¼ of S. W. ¼, sec. 8, T. 4 S. R. 3 W.,—630.84 acres.

No. —. E. ½ of W. ½, S. W. ¼ of S. W. ¼, E. ½ of S. E. ¼, sec. 19, T. 4 S. R. 3 W.,—272.28 acres.

No. —. S. W. ¼ of N. E. ¼, sec. 25, T. 4 S. R. 4 W.,—40.16 acres.

No. —. S. ½ of S. E. ¼, sec. 12; S. ½ of S. E. — sec. 13; N. ½ and S. W. ¼ of N. E. ¼, S. W. ¼, N. E. ¼ of N. W. ¼, S. W. ¼ of N. W. ¼, W. ½ S. E. ¼, sec. 24; S. E. ¼ of S. W. ¼, S. ½

of S. E. ½, sec. 23; N. E. ¼ of N. W. ¼, sec. 25; N. W. ¼ of N. E. ¼, S. ½ of N. W. ¼, sec. 26, T. 4 S. R. 4 W.,—883.88 acres.

No. —. E. ½ of W. ½, S. W. ¼ of S. W. ¼, sec. 2; S. ½ of S. E. ¼ sec. 3; W. ½ of S. W. ¼, N. ½ sec. 11; W. ½ of N. W. ¼, sec. 14; T. 4 S. R. 4 W.,—763.77 acres.

No. —. E. ½ and S. W. ¼ of S. E. ¼, S. W. ¼ of S. W. ¼, sec. 4; S. E. ¼ of S. E. ¼, sec. 5; E. ½ and S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼, sec. 8; N. W. ¼ of N. W. ¼, sec. 9; N. W. ¼ and S. E. ¼ of N. E. ¼, N. W. ¼ od S. E. ¼, W. ½ of S. W. ¼ sec. 17; N. ½ of N. E. ¼, sec. 19, T. 4 S. R. 4 W.,—722.21 acres.

No. —. N. W. ¼ of S. E. ¼, sec. 19; N. W. ¼ N. W. ¼, E. ½ of W. ½, sec. 20; N. ½ of S. W. ¼, sec. 28; S. E. ¼ of S. E. ¼, N. ½ of N. W. ¼, S. ½ of S. W. ¼, sec. 29; W. ½ of N. W. ¼, N. E. ¼ of N. W. ¼, sec. 32, T. 4 S. R. 4 W.,—643.45 acres.

No. —. S. E. ¼ of N. W. ¼, sec. 32, T. 4 S. R. 5 W.,—40.95 acres.

No. —. S. E. ¼ of S. E. ¼ sec. 24, T. 4 S. R. 5 W.,—40.39 acres.

No. —. See sec. 13, T. 3 S. R. 9 W.,—T. 4 S. R. 8 W.

No. —. See secs. 13, T. 3 S. R. 9 W.,—4 S. R. 9 W.

8 No. —. N. W. ¼ S. E. ¼, sec. 28; W. ½ S. W. ¼, sec. 33, T. 4 S. R. 10 W.,—120.73 acres.

No. —. See T. 5 S. R. 10 W.,—4 S. R. 10 W.

No. —. S. E. ¼ S. E. ¼ sec. 21; S. W. ¼ S. E. ¼ sec. 28; S. W. ¼ S. W. ¼ sec. 22; S. W. ¼ N. E. ¼, S. E. ¼ N. W. ¼, sec. 26, T. 4 S. R. 12 W.,—201.65 acres.

No. —. W. ½ S. ½ sec. 2; N. E. ¼ N. E. ¼ sec. 3; W. ½ N. W. ¼ sec. 11, T. 5 S. R. 3 W.,—277.09 acres.

No. —. W. ½ S. W. ¼, sec. 6; S. E. ¼ sec. 7; N. ½ N. W. ¼, N. ½ S. E. ¼, N. E. ¼ sec. 17. 5 S. R. 8 W.,—565.07 acres.

No. —. N. W. ¼ S. E. ¼ sec. 20; S. ½ and N. E. ¼ of S. W. ¼, sec. 21; S. ½ N. W. ¼, N. ½ and S. E. ¼ of N. E. ¼, sec. 28; N. ½ of S. E. ¼ sec. 33; W. ½ S. W. ¼, sec. 34. T. 5 S. R. 8 W., 521.90 acres.

No. —. W. ½ N. E. ¼, sec. 6; S. W. ¼ S. W. ¼ sec. 8; S. ½ N. W. ¼, S. W. ¼ sec. 17; W. ½ and N. E. ¼ N. W. ¼, W. ½ N. E. ¼, S. ½ S. E. ¼, sec. 20, T. 5 S. R. 8 W.,—653.78 acres.

No. —. W. ½ S. E. ¼, E. ½ N. E. ¼, sec. 6; N. E. ¼ sec. 7; N. W. ¼ S. W. ¼, sec. 8; S. ½ S. E. ¼, sec. 17, T. 5 S. R. 8 W., 448.78 acres.

No. —. S. W. ¼ sec. 23; N. ½ N. W. ¼, sec. 26; N. N. W. ¼, sec. 35, T. 5 S. R. 9 W.,—321.97 acres.

No. —. S. ½ N. W. ¼, sec. 23, T. 5 S. R. 9 W., 80.54 acres.

No. —. W. ½ S. E. ¼, sec. 12, T. 4 S. R. 10 W., S. E. ¼ S. E. ¼ sec. 3, T. 5 S. R. 10 W.; N. E. ¼ S. E. ¼, sec. 11; N. W. ¼ S. W. ¼ sec. 12; S. W. ¼ S. W. ¼ sec. 18; T. 6 S. R. 10 W., E. ½ S. W. ¼ sec. 11; N. E. ¼ S. E. ¼ sec. 15, T. 6 S. R. 9 W., N. E. ¼ S. E. ¼ Lot 17, sec. 33; Lot 18 sec. 34; T. 7 S. R. 7 W. N. W. ¼ N. W. ¼ sec. 8; N. E. ¼ N. E. ¼ *or* Lot 1, sec. 4 T. 8 S. R. 7 W., 494.93 acres.

No. —. S. ½ S. W. ¼ S. W. ¼ S. E. ¼ sec. 22; S. E. ¼ S. E. ¼ S. E. ¼ S. W. ¼, N. ½ S. ½ N. ½ sec. 32, T. 5 S. R. 11 W., 689.51 acres.

No. —. N. W. ¼ S. W. ¼, sec. 27; S. W. ¼ N. W. ¼, W. ½ S. W. ¼ sec. 28; S. ½ N. E. ¼, S. E. ¼ sec. 29; N. ½ S. W. ¼, N. W. ¼ N. W. ¼ N. E. ¼ sec. 33, T. 5 S. R. 11 W., 691.91.

No. —. S. W. ¼ S. W. ¼ sec. 10; W. ½ and S. E. ¼ N. W. ¼ N. E. ¼ S. W. ¼ sec. 15; S. ½ N. W. ¼, N. ½ S. W. ¼, sec. 22, T. 5 S. R. 11 W., 369.57 acres.

No. —. N. E. ¼ and S. W. ¼ N. W. ¼ sec. 36; S. W. ¼ N. E. ¼, sec. 35; N. E. ¼ S. W. ¼ sec. 34; N. W. ¼ S. W. ¼ sec. 15, T. 5 S. R. 11 W.,—199.82 acres.

No. —. S. W. ¼ N. E. ¼, N. W. ¼ S. E. ¼, sec. 22, T. 5 S. R. 11 W. 82.14 acres.

No. —. N. W. ¼ S. E. ¼, S. W. ¼ sec. 3; N. ½ and S. W. ¼ N. W. ¼ sec. 10; N. ½ S. W. ¼, sec. 14; W. ½ and S. E. ¼ S. W. ¼, S. W. ¼ S. E. ¼, E. ½ E. ½, sec. 15; S. W. ¼ sec. 18; N. ½ N. W. ¼ N. W. ¼ N. E. ¼, E. ½ of E. ½ sec. 22; S. W. ¼ S. W. ¼ sec. 23; N. E. ¼ N. E. ¼, sec. 26; N. W. ¼ N. E. ¼, N. E. ¼ S. W. ¼, S. W. ¼ S. W. ¼, sec. 27, S. W. ¼ S. W. ¼ S. W. ¼ S. E. ¼, sec. 32; S. W. ¼ S. W. ¼, E. ½ S. E. ¼, N. E. ¼ sec. 33; T. 5 S. R. 11 W.,—1758.95 acres.

9 No. —. S. W. ¼ N. E. ¼, N. E. ¼ S. W. ¼ sec. 17; S. E. ¼ S. W. ¼ W. ½ S. W. ¼, sec. 29; S. ½ S. E. ¼, W. ½ S. W. ¼, sec. 30; E. ½ of W. ½ sec. 32, T. 5 S. R. 12 W.,—489.21 acres.

No. —. E. ½ S. W. ¼ sec. 24, T. 5 S. R. 13 W., 80.96 acres.

No. —. S. W. ¼ S. E. ¼, S. W. ¼ N. W. ¼, S. W. ¼ sec. 30; W. ½ N. E. ¼, N. W. ¼ S. W. ¼, S. W. ¼ sec. 31, T. 6 S. R. 4 W., 473.14 acres.

No. —. S. W. ¼ S. E. ¼, sec. 26; N. W. ¼ N. E. ¼, sec. 35, T. 6 S. R. 5 W., 75.99 acres.

No. —. E. ½ of E. ½ sec. 25; N. ½ and S. E. ¼ of S. E. ¼ sec. 26; S. ½ and N. E. ¼ of N. E. ¼, sec. 35; N. ½ N. E. ¼, E. ½ S. W. ¼, W. ½ S. E. ¼, N. W. ¼, sec. 36, T. 6 S. R. 5 W.,—744.45 acres.

No. —. N. E. ¼ N. W. ¼, S. E. ¼ sec. 2; N. E. ¼ N. W. ¼, E. ½ of S. E. ¼, sec. 3; N. E. ¼ of N. E. ¼, sec. 10; N. ½ S. W. ¼ sec. 11; W. ½ N. E. ¼, N. E. ¼ S. W. ¼, sec. 12, T. 6 S. R. 8 W.,—560.03 acres.

No. —. W. ½ N. W. ¼, sec. 13; E. ½ N. W. ¼ sec. 14; N. ½ S. W. ¼ sec. 15; E. ½ N. W. ¼, N. E. ¼ S. W. ¼, sec. 24; N. ½ N. E. ¼, N. W. ¼ and S. E. ¼ of S. E. ¼ sec. 25, T. 6 S. R. 8 W., 519.06 acres.

No. —. S. E. ¼ N. W. ¼, S. W. ¼ N. E. ¼, N. W. ¼ S. E. ¼, sec. 20; S. E. ¼ sec. 21; N. ½ and S. W. ¼ of S. W. ¼, N. E. ¼ N. W. ¼, sec. 22; N. ½ of S. W. ¼, Sec. 23, T. 6 S. R. 8 W., 519.21 acres.

No. —. S. W. ¼ N. W. ¼, W. ½ S. W. ¼, sec. 29; S. E. ¼ N. W. ¼, W. ½ N. W. ¼, N. ½ of S. ½, sec. 32, T. 6 S. R. 8 W.,—439.22

No. —. All of sec. 30, T. 6 S. R. 8 W.,—663.20 acres.

No. —. All of sec. 31, T. 6 S. R. 8 W.,—660.48 acres.

No. —. S. E. ¼ of N. E. ¼, E. ½ of S. E. ¼, Sec. 10, T. 6 S. R. 8 W.,—119.83 acres.

No. —. See T. 5 S. R. 10 W.,—T. 6 S. R. 9 W.

No. —. E. ½ S. E. ¼, sec. 24; E. ½ of E. ½, sec. 25, T. 6 S. R. 9 W., 243.24 acres.

No. —. *No.* See T. 5 S. R. 10. W.,—T. 6 S. R. 10 W.

No. —. S. W. ¼ sec. 2; S. ½ of S. E. ¼, N. W. ¼ S. E. ¼, sec. 3 S. E. ¼ of N. E. ¼, sec. 15, T. 6 S. R. 11 W.,—325.11 acres.

No. —. S. E. N. E. ¼, sec. 28; S. E. ¼ S. E. ¼ S. W. ¼, sec. 29; S. E. ¼ N. E. ¼ sec. 31; N. E. ¼ S. W. ¼, W. ½ S. W. ¼, sec. 33; S. ½ S. W. ¼, N. E. ¼ N. E. ¼, W. ½ N. E. ¼, N. W. ¼ N. W. ¼ S. E. ¼, sec. 34, T. 6 S. R. 11 W.,—808.78 acres.

No. —. S. W. ¼ S. E. ¼ sec. 3; S. W. ¼ S. W. ¼ sec. 4; W ½ S. W. ¼ sec. 15; W. ½ E. ½, sec. 18; W. ½ E. ½ sec. 9; N. E. ¼ N. W. ¼, sec. 27; S. E. ¼ S. E. ¼, E. ½ S. W. ¼ sec. 5; W. ½ W. ½, E. ½ E. ½ sec. 8; N. ½ S. W. ¼, W. ½ S. E. ¼, S. W. ¼ N. E. ¼ N. W. ¼ sec. 22; N. ½ N. E. ¼, sec. 29; N. W. ¼ N. E. ¼, N. ½ N. W. ¼, sec. 28; N. W. ¼ N. E. ¼, N. ½ N. W. ¼, sec. 30; N. ½ S. W. ¼, N. E. ¼ N. E. ¼, S. W. ¼ N. E. ¼, Sec. 31; S. W. ¼ N. W. ¼, S. E. ¼ N. E. ¼, Sec. 34, T. 6 S. R. 11 W., 1824.98 acres.

10 No. —. W. ½ sec. 4 T. — R. —; E. ½ of E. ½, N. W. ¼ S. E. ¼, S. W. ¼ N. E. ¼, N. E. ¼ N. W. ¼, Sec. 5, T. 6 S. R. 12 W., 606.27 acres.

No. —. N. ½ W. ½, E. ½ S. W. ¼, sec. 19; N. W. ¼ N. E. ¼, sec. 20, T. 6 S. R. 12 W., 607.84 acres.

No. —. N. E. ¼ N. W. ¼, W. ½ N. W. ¼, W. ½ S. E. ¼, E. ½ S. W. ¼, S. W. ¼ S. W. ¼ sec. 20; N. E. ¼, E. ½ N. W. ¼, N. W. ¼ N. W. ¼, sec. 29; T. 6 S. R. 12 W., 606.16 acres.

No. —. S. E. ¼ S. E. ¼, W. ½ S. E. ¼, S. W. ¼ sec. 29; S. W. ¼ N. W. ¼, W. ½ S. W. ¼, sec. 28; W. ½ N. E. ¼, S. E. ¼ Sec. 30, T. 6 S. R. 12 W., 647.38 acres.

No. —. E. ½ of W. ½ sec. 30; N. E. ¼ N. E. ¼, W. ½ N. E. ¼ S. ½ sec. 31, T. 6 S. R. 12 W., 603.96 acres.

No. —. N. W. ¼ sec. 31, S. E. ¼ N. E. ¼, W. ½ N. E. ¼, E. ½ N. W. ¼, N. W. ¼ N. W. ¼, sec. 32, T. 6 S. R. 12 W.; W. ½ of N. W. ¼, sec. 33, T. 6 S. R. 12 W.

No. —. S. ½ Sec. 32, T. 6 S. R. 12 W., 322.12 acres.

No. —. N. W. ¼ sec. 20; S. E. ¼ Sec. 30; N. ½ of S. E. ¼, N. ½ Sec. 31 T. 7 S. R. 4 W.,—731.68 acres.

No. —. S. ½ and N. W. ¼, of S. W. ½ sec. 27 T. 7 S. R. 5 W., 131.55 acres.

No. —. N. W. ¼ N. E. ¼, S. W. ¼ N. W. ¼, W. ½ N. W. ¼, Sec. 1; S. ½ of S. E. ¼, Sec. 6; E. ½ N. E. ¼, S. E. ¼ of S. E. ¼, sec. 7; N. E. ¼ W. ½, Sec. 8, N. W. ¼ and S. ½ sec. 9; N. ½ S. W. ¼ sec. 10; E. ½ S. E. ¼, N. ½ and S. W. ¼ N. W. ¼ N. E. ¼ sec. 17; S. ½ N. W. ¼, E. ½ and S. W. ¼ N. E. ¼ S. E. ¼ sec. 18; N. W. ¼ S. E. ¼ sec. 21; S. ½ S. W. ¼ sec. 22; N. E. ¼, S. W. ¼ N. W. ¼ sec. 27; E. ½ of E. ½ sec. 28; S. W. ¼ S. W. ¼ sec. 29; N. E. ¼ sec. 31; N. W. ¼ N. W. ¼ sec. 32; S. ½ and N. W. ¼, sec. 33; W. ½ sec. 34; T. 7 S. R. 5 W., 4105.89 acres.

No. —. S. W. ¼ S. E. ¼, S. W. ¼ S. W. ¼, sec. 8; N. W. ¼ N. E. ¼ sec. 17; T. 7 S. R. 6 W, 121.21 acres.

No. —. E. ½ sec. 33; W. ½ and N. E. ¼, sec. 34, T. 7 S. R. 6 W., 809.24 acres.

No. —. N. E. ¼ S. E. ¼, E. ½ S. E. ¼ S. W. ¼ sec. 12; S. W. ¼ sec. 22; W. ½ S. W. ¼, Sec. 26; S. ½ S. E. ¼, N. ½ W. ½ sec. 27; N. ½ N. E. ¼ sec. 28; S. W. ¼ sec. 36, T. 7 S. R. 6 W., 927.01 acres.

No. —. S. E. ¼ S. E. ¼ sec. 23; N. W. ¼ N. W. ¼ sec. 24; N. E. ¼ N. E. ¼ sec. 26 T. 7 S. R. 7 W., 119.83 acres.

No. —. See T. 5 S. R. 10 W.,—T. 7 S. R. 7 W.

No. —. N. ½ N. W. ¼, N. W. ¼ N. E. ¼, Sec. 2, T. 7 S. R. 8 W., 120.48 acres.

No. —. N. E. ¼ N. E. ¼ sec. 5; E. ½ N. E. ¼, E. ½ S. W. ¼ sec. 4; E. ½ S. E. ¼ sec. 7; S. W. ¼ N. W. ¼ sec. 8; N. E. ¼ N. E. ¼ sec. 9; N. E. ¼ S. W. ¼, N. W. ¼ S. E. ¼, Sec. 10, T. 7 S. R. 11 W.,—454.05 acres.

No. —. E. ½ S. E. ¼, Sec. 36, T. 7 S. R. 11 W., 80.50 acres.

11 No. —. Fl. S. W. ¼ sec. 21, T. 7 S. R. 13 W., 62.32 acres.

No. —. S. E. ¼ N. W. ¼, E. ½ and S. W. ¼, S. W. ¼ sec. 4, T. 8 S. R. 6 W.,—163.88 acres.

No. —. Lots 9, 15 Sec. 4; Lots 1, 8, 10, 14, 16, sec. 9; W. ½ S. W. ¼, sec. 10; N. E. ¼ S. E. ¼, sec. 17, T. 8 S. R. 7 W.,—397.62 acres.

No. —. See T. 5 S. R. 10 W.,—8 S. R. 7 W.

No. —. See T. 5 S. R. 10 W.,—8 S. R. 8 W.

N. —. W. ½ W. ½ sec. 1; W. ½ W. ½ Sec. 12, T. 8 S. R. 11 W., 327.02 acres.

No. —. S. E. ¼ N. E. ¼, N. E. ¼ S. E. ¼, Sec. 11; N. W. ¼ N. E. ¼, sec. 14; N. E. ¼ N. E. ¼, S. W. ¼ N. E. ¼, sec. 35, T. 8 S. R. 11 W.,—199.73 acres.

No. —. S. ½ S. E. ¼, sec. 28, T. 11 S. R. 11 W.,—80.11 acres.

No. —. N. W. ¼ Sec. 14, T. 11 S. R. 11 W.,—161.30 acres.

No. —. All of section 9, T. 12 S. R. 1 W., 640.24 acres; E.

No. —. E. ½ S. E. ¼, N. ½ sec. 19, T. 12 S. R. 1 W., 446.63 acres.

No. —. N. W. ¼ Sec. 28; N. ½ Sec. 29, T. 12 S. R. 1 W.,—480.00 acres.

No. —. All of section 1, T. 12 S. R. 1 W., 641.84 acres.

No. —. N. ½ sec. 2; N. ½ sec. 4, T. 12 S. R. 1 W.,—654.40 acres.

No. —. S. W. ¼ sec. 11; E. ½ sec. 12; N. W. ¼ sec. 14, T. 12 S. R. 1 W.,—640.82 acres.

No. —. N. ½ S. ½ N. ½ S. W. ¼ S. W. ¼, S. E. ¼ S. E. ¼ sec. 24; N. E. ¼ N. E. ¼, N. ½ S. W. ¼, W. ½ and S. E. ¼ N. W. ¼ sec. 25; S. E. ¼ S. W. ¼, S. E. ¼ N. E. ¼, E. ½ and S. W. ¼ S. E. ¼ sec. 26, T. 12 S. R. 1 W., 1000.31 acres.

No. —. All of section 14, T. 12 S. R. 2 W., — acres.

No. —. W. ½ S. E. ¼, N. ½ S. W. ¼, sec. 22; N. W. ¼ N. E. ¼ N. ½ N. W. ¼, sec. 27, T. 12 S. R. 2 W., 686.69 acres.

No. —. N. ½ Sec. 23; N. ½ Sec. 24, T. 12 S. R. 2 W., 646.40 acres.

No. —. N. W. ¼ sec. 5; N. ½ S. ½, E. ½ N. W. ¼, N. E. ¼ Sec. 6, T. 12 S. R. 2 W.,—585.43 acres.

No. —. N. ½ sec. 4; E. ½ sec. 5, T. 12 S. R. 2 W.,—646.24 acres.

No. —. S. ½ sec. 2; N. E. ¼ and S. W. ¼ sec. 3, T. 12 S. R. 2 W., 646.24 acres.

No. —. W. ½ N. E. ¼, sec. 12, T. 12 S. R. 6 W., 82.17 acres.

No. —. S. E. ¼ S. E. ¼; Sec. 3, T. 1 N. R. 5 E.,—40.44 acres.

No. —. N. E. ¼ S. W. ¼, sec. 25; W. ½ N. E. ¼, sec. 36, T. S. N. R. 4 E.,—146.25 acres.

No. —. S. E. Fl. ¼ of N. E. Fl. ¼, sec. 34, T. 7 S. R. 6 E., 32.70 acres.

12 No. —. W. ½ N. W. ¼ or Lot 3, Sec. 15 S. W. ¼ S. W. ¼ sec. 31, T. 9 S. R. 6 E.,; N. W. ¼ N. W. ¼, sec. 6, T. 10 S. R. 6 E., Lot 1 sec. 2 T. 10 S. R. 5 E., 172.72 acres.

No. —. S. ½ S. W. ¼, S. E. ¼ sec. 3; S. ½ S. E. ¼ sec. 4; N. E. ¼ sec. 5; W. ½ S. E. ¼, sec. 19; E. ½ S. W. ¼, S. E. ¼ sec. 22; S. ½ S. E. ¼ sec. 24; N. E. ¼ sec. 25; N. E. ¼ sec. 27; N. ½ S. W. ¼, sec. 28; W. ½ N. E. ¼, N. W. ¼ S. E. ¼, sec. 35; N. ½ S. W. ¼, E. ½ and S. W. ¼ N. W. ¼ sec. 35, T. ½ S. R. 1 E.,—1612.23 acres.

No. —. W. ½ S. W. ¼, sec. 15; N. ½ N. E. ¼, N. W. ¼ sec. 31, T. 12 S. R. 2 E.,—323.57 acres.

No. —. N. W. ¼ S. E. ¼, N. E. ¼ sec. 17; Lot 1 W. ½ N. E. ¼ N. W. ¼ S. E. ¼, E. ½ and N. W. ¼, S. W. ¼ N. W. ¼, sec. 19; E. ½ S. E. ¼, sec. 22; W. ½ S. E. ¼, E. ½ N. W. ¼, S. W. ¼ sec. 23; N. ½ N. W. ¼, Sec. 26, T. 13 S. R. 2 E.,—1179.69 acres.

No. —. N. ½ N. W. ¼, sec. 1; N. ½ N. E. ¼, sec. 2; N. W. ¼ N. W. ¼, sec. 30; S. W. ¼ N. E. ¼, sec. 33, T. 13 S. R. 2 E.,—241.91 acres.

Northwestern.

No. —. All Fl. sec. 36 T. 7 N. R. 8 W.,—224.46 acres.

No. —. S. ½ N. ½, N. W. ¼ N. W. ¼, N. ½ S. ½, S. ½ S. E. ¼ sec. 3 T. 9 N. R. 5 W.,—436.10 —.

No. —. S. ½ S. W. ¼, sec. 3; W. ½ S. E. ¼, S. W. ¼, N. ½, Sec. 9 T. 9 N. R. 5 W.—635.57 acres.

No. —. E. ½ S. E. ¼, sec. 9; S. W. ¼ sec. 10; N. ½ Sec. 15; W. ½ N. W. ¼, sec. 14, T. 9 N. R. 5 W.,—632.42 acres.

No. —. N. E. ¼ of N. W. ¼, N. ½ N. E. ¼, sec. 3, T. 9 N. R. 5 W.,—119.12 acres.

No. —. All sec. 34, To. 10 N. R. 5 W.,—636.64 acres.

All sec. 35 T. 10 R. 5 W., 635.92 acres.

No. —. West ½ — and S. E. ¼ S. E. ¼, S. W. ¼ sec. 26; S. ½ sec. 27, T. 10 N. R. 5 W.,—595.20 acres.

No. —. S. W. ¼ sec. 28; S. ½ and N. W. ¼ of N. W. ¼, E. ½ E. ½ S. W. ¼ S. E. ¼, S. W. ¼ sec. 33, T. 10 N. R. 5 W., 629.61 acres.

No. —. S. ½ N. E. ¼, N. E. ¼ S. E. ¼, sec. 26, T. 10 N. R. 5 W., 119.13 acres.

No. —. N. ½ N. W. ¼, W. ½ N. E. ¼, W. ½ and S. E. ¼ of S. E. ¼ of S. E. ¼ S. E. ¼ S. W. ¼ Sec. 10; W. ½ and S. E. ¼

of N. W. ¼, S. W. ¼ N. E. ¼ Fl. S. ½ sec. 15, T. 11 N. R. 5 W. 580.20 acres.

No. —. S. W. ¼ sec. 8, T. 11 N., R. 5 W., 160.10 acres.

No. —. N. ½ S. ½, S. W. ¼ S. W. ¼, N. ½ sec. 4; S. E. ¼ S. E. ¼ sec. 5, T. 11 N. R. 5 W.,—561.11 acres.

13 No. —. N. ½ N. W. ¼, W. ½ N. E. ¼, W. ½ N. E. ¼, W. ½ and S. E. ¼ S. E. ¼, S. E. ¼ S. W. ¼, sec. 10; W. ½ and S. E. ¼ N. W. ¼, S. W. ¼ N. E. ¼ and Fl. S. ½, sec. 15, T. 11 N. R. 5. W.,—580.20 acres.

No. —. W. ½ and S. E. ¼ S. E. ¼, sec. 4; N. E. ¼ N. W. ¼, W. ½ S. W. ¼, sec. 21; S. ½ S. W. ¼, sec. 28; W. ½ N. E. ¼ S. E. ¼ sec. 29; N. E. ¼, sec. 32, T. 12 N. R. 5 W.,—710.00 acres.

No. —. E. ½ Sec. 5 E. ½ sec. 8, T. 12 N. R. 5 W.,—640.21 acres.

No. —. E. ½ N. W. ¼, N. E. ¼ S. W. ¼, sec. 5, T. 12 N. R. 5 W.; E. ½ S. E. ¼, sec. 30; E. ½ N. E. ¼, N. E. ¼ S. E. ¼, sec. 31, W. ½ sec. 32, T. 13 N. R. 5 W.,—630.42 acres.

No. —. W. ½ sec. 29; E. ½ sec. 32, T. 13 N., R. 5 W.,—636.10 acres.

No. —. S. ½ and N. E. ¼, N. W. ¼, N. ½ and S. E. ¼ S. W. ¼ S. E. ¼ sec. 14; E. ½ N. E. ¼, S. E. ¼ sec. 15, T. 13 N. R. 5 W.,—638.13 —.

No. —. E. ½ and S. W. ¼ S. W. ¼, sec. 17; W. ½ N. W. ¼, sec. 20; N. E. ¼ sec. 23; E. ½ N. W. ¼, S. ½ N. E. ¼, N. ½ S. E. ¼, sec. 24, T. 13 N. R. 5 W., 577.36 acres.

No. —. S. ½ and N. E. ¼ S. W. ¼, S. W. ¼ S. E. ¼, sec. 7; N. ½ and S. E. ¼, N. W. ¼, N. ½ and S. W. ¼ N. E. ¼, W. ½ and S. E. ¼ S. E. ¼, sec. 18; E. ½ of N. E. ¼, sec. 19, T. 13 N. R. 5 W.,—598.53 acres.

No.—. See T. 12 N. R. 5 W.,—T. 13 N. R. 5 W.

No. —. N. E. ¼ N. E. ¼ sec. 1; T. 13 N. R. 6 W.,—40.63 acres.

S. E. East of River.

No. —. W. ½ N. W. ¼, sec. 25; E. ½ N. E. ¼, sec. 26, T. 9 S. R. 5 E.,—160.14 acres.

No. —. S. E. ¼ S. W. ¼, S. ½ S. E. ¼, sec. 19, T. 9 S. R. 5 E., 119.75 acres.

No. —. S. W. ¼ S. E. ¼, sec. 17, T. 9 S. R. 5 E.,—40.00 acres.

No. —. All sec. 20, T. 9 S. R. 5 E.—639.06 acres.

No. —. N. W. ¼ sec. 18, T. 9 S. R. 5 E.,—190.13 acres.

No. —. All sec. 30, T. 9 S. R. 5 E.,—633.44 acres.

No. —. All except N. W. ¼ N. W. ¼ of sec. 19, T. 9 S. R. 5 E., 601.44 acres.

No. —. E. ½ sec. 31 T. 9 S. R. 5 E., W. ½ sec. 32, T. 9 S. R. 5 E.,—605.69 acres.

No. —. Lots 5, 11 sec. 9; Lots 3, 7, 8 W. ½ S. E. ¼, S. E. ¼ S. W. ¼, sec. 8 T. 9 S. R. 5 E.,—291.10 acres.

No. —. N. ½ and S. E. ¼ S. W. ¼, N. ½ and S. W. ¼ of S. E. ¼ sec. 11, T. 9 S. R. 5 E.,—240.03 acres.

No —. All except lots 3 and 4 sec. 3 Sec. 14, T. 9 S. R. 5 E., 619.84 acres.

14 North of Red River.

No. —. N. E. ¼ S. W. ¼, sec. 21, T. 13 N. R. 3 W.,—39.89 acres.
No. —. S. W. ¼ N. W. ¼, sec. 23, T. 20 N. R. 2 W.,—40.00 acres.
No. —. S. E. ¼ S. W. ¼, sec. 1, T. 12 N. R. 3 E.,—40.10 acres.
No.—. Lots 3, 4, 6, N. E. ¼ N. W. ¼, sec. 18, T. 15 N. R. 4 E., 103.36 acres.
No.—. Lots 3and 4, sec. 21, T. 17 N. R. 3 E.,—69.16 acres.

15 Petitioners aver that on the same day they made a legal tender of One Dollar and fifty cents for each and every acre of land applied for, which tender was made in legal tender money of the United States of America, and according to law, but was wrongfully refused by the said A. W. Crandell, Register of the State Land Office; that petitioners, on the same day made demand upon Paul Capdevielle, Auditor of the State to accept their said tender and issue warrants on the Treasurer of the State to accept said purchase price of said lands; that the Auditor wrongfully refused to issue said warrants upon the ground that the Register of the Land Office had refused the tenders of petitioners; that, thereupon, your petitioners made another legal tender to James M. Smith, State Treasurer, who likewise wrongfully declined same; the whole as appears by reference to the original applications of petitioners, and endorsements or notes entered upon the Tract Book of the written refusal of the Register of the Land Office, Auditor of the State and State Treasurer, on file in the office of the Register of the State Land Office, which are hereby specially referred to and made part of this petition.

Petitioners aver that the Register of the Land Office refused petitioners' applications and tenders upon the grounds stated in his written refusal made part hereof, to-wit: that said lands had been theretofore entered or patented to others.

Petitioners aver that in every case, the lands herein described were entered with illegal McEnery Scrip or certificates, heretofore set out, and the patents that were issued therefor refer upon their face either to act No. 23 of 1880 or to the Certificate number which certificate showed upon its face it was issued under Act 23 of 1880, and said Certificates and said patents were and are absolutely null and void, illegal and of no effect.

16 Petitioners aver that they are the first and only applicants for said lands under the provisions of Act No. 125 of 1902, or of any other law of this State, since the date of the issuance of said illegal McEnery Certificates and Patents purchased therewith, and that upon complying with the provisions of said act No. 125 of 1902, and making legal tender of the purchase price of said lands, they became vested with the right to acquire said lands.

Petitioners aver that the Legislature of this State has just passed act No. 85 of 1906, known as House Bill No. 223, approved the — day of July, 1906, entitled: "An act declaring that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees, or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said patents, where the said patents were not paid for in money, but were paid

for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees of said patents to validate and perfect their title to the lands covered by said patents or to any part or subdivision of such lands within one year from date of passage of this act by paying therefor in cash the price of One Dollar and Fifty cents per acre", and act No. 86 of 1906, known as House Bill No. 224, approved the — day of July, 1906, entitled "An act declaring that present holders and owners of certificates of entry for public lands, issued by the State of Louisiana, their heirs, assignees, or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said certificates of entry, where the said certificates of entry were not paid for in money, but were paid for by certificates or warrants for scrip which were not legally receivable in payments for such certificates of entry, and authorizing such present holders and owners of said certificates of entry, their heirs, assignees, or transferees to validate and perfect their title, to the lands covered by the said certificates of entry or to any part or subdivision of such lands, within one year from date of passage of this act, by paying therefor in cash the price of One Dollar and fifty cents per acre.

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That said act No. 85 of 1906, provides that upon the present holders of patents to the lands described in this petition making the payment of One dollar and fifty cents per acre, "The said patents shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

That said Act No. 86 of 1906, provides that upon the present holders of certificates of entry of lands described in this petition making the payment of One dollar and fifty cents per acre, "said certificates of entry shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

Petitioners aver that these acts acts are unconstitutional, null and void, being violative of the provisions of both the Constitutions of the United States of America, and of the State of Louisiana.

Petitioners aver that said acts violate article 48 of the Constitution of this State of 1898, prohibiting the General Assembly from passing any local or special law "legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any Parish or municipality thereof," which said acts do, when they validate and legalize said certificates and said Patents as specifically declared in said acts.

That said acts violate article 31 of the Constitution of this State of 1898, requiring that every law enacted by the General Assembly shall embrace but one object, and that shall be expressed in its title, in that said acts embrace more than one object and more than one object is expressed in their titles.

That said acts are further violative of article 32 of the Constitution of this State of 1898, because in effect they amend Act 75 of 1880, and especially section 10 of said act, which provides for the payment of seventy five cents an acre for the lands entered under same, which payment is now increased to One Dollar

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and fifty cents, and modifies and amends section 5 of said Act, no reference being made to said Sections of said law, while the said Article 32 of the Constitution requires that they be re-enacted and published at length, if amended.

That said acts are unconstitutional and violative of Article 166 of the Constitution of this State of 1898 and of the Constitution of the United States, Article I Sec. 10, prohibiting the passing of any law impairing the obligations of contracts, or of divesting vested rights, unless for purposes of public utility, and for adequate compensation previously paid, in that your petitioners have an implied contract with the State of Louisiana to purchase the lands offered for sale and applied for by petitioner the purchase price of which was duly tendered, but wrongfully refused, and in that your petitioners have a vested right to acquire said lands under their said applications and tenders, and said acts, if carried into effect, will deprive your petitioners of the right to acquire these lands by giving title thereto to third parties, who have never legally applied for same, nor have any legal title thereto.

That said acts are further violative of Article 50 of the Constitution of this State of 1898, in that said acts are local, and have not been duly advertised for thirty days prior to the introduction of said laws, in the locality where the lands to be affected are situated.

Petitioners specially aver that said acts are violative of the Constitution of the United States, Article I sec. 10, in that it is attempted thereby to disregard petitioners' applications to enter said lands and their tenders of the purchase price of same, which gave petitioners a vested right to acquire said lands, and to give a retroactive effect to the payment now into the State Treasury of a price per acre different from
that required under the laws in force at the date of the issu-
19 ance of the alleged certificates and patents would be to divest
petitioners of their vested rights to acquire said lands according to the laws in force at the date of their application and tenders.

Petitioners aver that said Acts have been signed and promulgated, and that the holders of said illegal certificates and Patents are about to apply to the Register of the Land Office of this State, the State Auditor, or the State Treasurer, to be allowed to pay into the State Treasury the sum of One Dollar and Fifty cents per acre for the lands described in this petition, and for such petitioners have, as heretofore set out, made applications to enter, and that petitioners fear and believe that the Register of the Land Office, under the advice of the Attorney General of this State, and the State Auditor, or the State Treasurer, will receive payment of said One Dollar and a half per acre from said parties, or allow them to comply with the provisions of said acts, or that the Register of the State Land Office will, in those cases, where Patents have not been issued, issue Patents to cover said lands.

That petitioners will suffer an irreparable injury, and its vested rights be impaired and divested, if the Register of the State Land Office, the State Auditor, or the State Treasurer, shall receive or authorize the receipt of One Dollar and a half per acre stipulated

to be paid in said acts; that the amount involved herein, or petitioners' interest in the lands described in this petition, and thus attempted to be put beyond petitioners' reach, largely exceeds the sum of Five Thousand Dollars; that an injunction is necessary, restraining and enjoining the Register of the Land Office, the Auditor of this State and the State Treasurer, and each of them, from accepting or receiving, or authorizing the receipt of the payment of One Dollar and a half per acre offered or tendered by any present holder or owner of patents or certificates purporting to convey or to cover any of the lands described in this petition, or from doing any act or taking any step having for its object the carrying out of the provisions of acts 85 and 86 of 1906.

Wherefore petitioners pray that the Honorable A. W. Crandell, Register of the State Land Office, the Hon. Paul Capdevielle, Auditor of the State, the Honorable James M. Smith, Treasurer of the State, be cited to appear and answer this petition, and that, the annexed affidavit considered, an injunction issue herein directed to said defendants, enjoining, restraining and prohibiting them, and each of them from receiving, or authorizing the receipt of One Dollar and a half per acre offered or tendered by any present owner or holder of Patents or Certificates purporting to convey or covering any of the lands described in this petition and from doing any act or taking any step, having for its object the carrying out of the provisions of Acts 85 and 86.

And petitioners pray that after due proceedings there be judgment in their favor and against said defendants, and each of them, making said injunction perpetual and forever enjoining, restraining and prohibiting them, or either of them from receiving or authorizing the receipt of One Dollar and a half per acre offered or tendered by any present holder or owner of Patents or certificates purporting to convey, or covering any of the lands described in this petition; and petitioners pray that said acts 85 and 86 of 1906 be declared unconstitutional, null and void and of no effect; and petitioners pray for all general and equitable relief.

(Signed) H. G. MORGAN,
(") P. M. MILNER, *Att'ys.*

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared, Joseph W. Frellsen, who being duly sworn deposes and says, that he is a member of the firm of J. W. Frellsen & Company; that James D. Hill, his co-partner, is temporarily out of this State; that he has read the foregoing petition, and for himself and said James D. Hill, declares that all the facts and allegations thereof are true and correct.

(Signed) J. W. FRELLSEN.

Sworn to and subscribed before me this Eleventh day of July A. D. 1906.

(Signed) PURNELL M. MILNER,
Not. Pub.

Order.

The foregoing petition and affidavit considered, let a writ of injunction issue herein as prayed for, upon the plaintiffs giving bond in the sum of One Thousand Dollars ($1000.00), conditioned as the law directs, and according to law.

July 12th 1906

(Signed) GEO. K. FAVROT, *Judge.*

22 BATON ROUGE, LA., *July 12th,* 1906.

Service of petition, citation and writ herein accepted for A. W. Crandell, Register of the State Land Office.

(Signed) WALTER GUION,
Attorney General.

Filed July 11th, 1906.

(Signed) T. E. McHUGH, *Clerk.*

Bond for Injunction.

Know all men by these presents, That, we J. W. Frellsen & Co., as principal and Fidelity & Deposit Co. of Md. as security, doing business in the State of Louisiana, are held and firmly bound unto A. W. Crandell, Register of the State Land Office, Paul Capdeville, Auditor of the State, and James M. Smith, Treasurer of the State, in the sum of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, to be paid to said defendants, or either of them, their heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated the twelfth day of July in the year of our Lord 1906.

Whereas, the said J. W. Frellsen & Co., has presented a petition to the Honorable 22nd Judicial District Court for the Parish of East Baton Rouge, praying for a Writ of Injunction.

Now, the condition of the above obligation is, That we, the above bounden J. W. Frellsen & Co., and the Fidelity & Deposit Co., of Md., will well and truly pay to the said A. W. Crandell, Register of the State Land Office, Paul Capdeville, Auditor of the State, and James M. Smith, Treasurer of the State, or either of them, the defendants in said writ all such damages as they may recover

23 against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) J. W. FRELLSEN & CO.,
H. G. MORGAN, *Att'y.*
FIDELITY & DEPOSIT CO. OF MD.,
By P. M. MILNER, *Local Director.*

Attest:
CHAS. H. BLACK, *General Agent.*

Signed and delivered in presence of
—— ——.

Filed July 12th, 1906.
(Signed) T. E. McHUGH, *Clerk.*

24 *Answer of A. W. Crandell.*

State of Louisiana, 22d Judicial District Court, Parish of East Baton Rouge.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into this Honorable Court, through the Attorney General of the State of Louisiana, come A. W. Crandell, Register of the State Land Office, one of the defendants herein, who, for answer to the demand contained in the petition of plaintiffs, say that they deny all and singular the allegations of the same except such as may be hereinafter admitted.

Respondents admit that, in 1880, by act No. 23, approved March 8th, 1880, the General Assembly of the State of Louisiana authorized the Governor of the State to employ counsel to recover for the State from the Federal Government certain lands, the character of which is fully set out in said act or the value of same in money or scrip of the General Government, and that on the 20th March, 1880, Louis A. Wiltz, the then Governor of the State of Louisiana, entered into a written contract with John McEnery for the purpose of carrying out the provisions of said act.

Further answering, respondents aver that, in the contract thus entered into, it is provided that in the event of lands being recovered in kind by said John McEnery, the compensation to be received by him for his services should be represented by scrip or certificates to be issued by the Register of the State Land Office locatable upon any lands owned by the State, but respondents aver that they have good reason to believe, and they, therefore, aver, that the Governor of the State aforesaid exceeded the authority conferred upon him by the terms of act No. 23 of the General Assembly of 1888 in thus providing for the issuance of scrip or certificates by the Register of the

State Land Office to be delivered to said John McEnery locat-
25 able upon such lands in as much as, by said act, it is distinctly declared that the only compensation which said John McEnery could receive was an allowance to be made by the Governor of the State out of such lands, money or scrip as he might recover for the State from the General Government and, for that reason, respondents aver that the Register of the State Land Office was absolutely without power, right or authority to issue to said John McEnery certificates or scrip locatable upon any lands of the State, and that any scrip or certificates, so issued, were, at the time, have always been, and are now, absolutely null and void and of no effect or value.

Respondents aver further that by act No. 106 of 1888, approved July 12th, 1888, act No. 23 of 1888 was repealed and the agreement or contract which had been entered into on the 20th — March, 1880, between Louis A. Wiltz, governor of the State, and John McEnery, thereby terminated and brought to an end in every respet.

Respondents admit that the then Register of the State Land Office in pursuance of the illegal provisions contained in said agreement or contract of 20th — March, 1880, authorizing the issuance by him to John McEnery of certificates or scrip locatable on any lands of the State of Louisiana, did issue to said McEnery a large number of such certificates which were made locatable upon vacant land belonging to the State, which already belonged to the State by virtue of her title thereto derived from the General Government under the various acts of the Congress of the United States set out in the petition of plaintiffs, and which had not been recovered to the State by said John McEnery under the contract entered into between him and Governor Wiltz, and that the certificates thus illegally issued were, thereafter, sold and assigned by said McEnery and were, by the assignees of same, located upon certain public lands of the State which had not been recovered for the State by said McEnery under the said contract entered into between him and said Wiltz,
26 Governor of the State, who exceeded the authority given to him by the aforesaid Act No. 23 of 1888, in agreeing or consenting that said McEnery or his assigns, should be given the right to any lands, money or scrip other than such as would be recovered by him from the General Government, and that, after said lands had been so located under said certificates so illegally issued, patents to the same were, in many instances, illegally issued to said assignees, signed by the then Governor and Register of the State Land Office.

Respondent avers that, from an examination of the records of his office, he believes it to be true, as alleged by plaintiffs, and he therefore avers, that the lands described in the petition of plaintiffs were not recovered by the State by said John McEnery under the aforesaid contract, and, for that reason, respondent avers that the issuance to him by the Register of the State Land Office of the certificates so issued by him for the said lands, as was done, was done illegally and absolutely without right, power, or authority in the Register and Governor aforesaid, and that the acts of said Register in so issuing the same were absolutely illegal, null and void and *ultra*

vires, and that any and all patents issued upon said certificates to the lands described in the petition, as well as to all other lands of like character belonging to the State, were so issued without right or authority on the part of the said Register or the Governor of the State, and their acts in so issueing such patents were at the time, have always been, and are now, absolutely null and void and of no effect and that the said patents have not divested the State of Louisiana to her title in and to said lands.

Respondent admits that, on the 28th of March, 1905, plaintiff did make application to respondent, as Register of the State Land Office, to enter and acquire from the State of Louisiana the lands which are fully described in the petition, and that plaintiffs,
27 on the same day, made to respondent tender of One Dollar and fifty cents per acre for each and every acre of land so applied for, but that respondent refused to entertain said application and tender for the reason that all of said lands had been patented to others, and because respondent, as Register of the State Land Office, was without authority to issue said patents or issue other patents to plaintiffs for the same lands until the patents already issued to the same had been set aside and annulled.

Further answering, Respondent admits that the Legislature of the State of Louisiana did enact act No. 85, approved July 7th, 1906, and act No. 86, approved July 6th, 1906, but respondent denies that the said acts, or either of them, are unconstitutional, null and void for the reasons and upon the grounds u*e*dged and alleged by plaintiffs in the petition herein, but that, on the contrary, both of said acts are valid, legal and constitutional and within the power of the legislature of the State of Louisiana to enact, and that the same do not violate or contravene the Constitution of the United States or of the State of Louisiana as alleged by plaintiffs.

Wherefore, averring that plaintiffs demand is neither just nor well founded, respondent prays that the demand of plaintiffs be rejected and dismised with costs. And for all and general relief.

(Signed) WALTER GUION,
Attorney General.

Filed Feb'y 14th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

28 *Answer of Paul Capdeville, Auditor, and James M. Smith, State Treasurer.*

State of Louisiana.

22nd Jud'y District Court, Parish of East Baton Rouge.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into this Honorable Court, through the Attorney General of the State of Louisiana, come Paul Capdeville, State Auditor of Pub-

lic Accounts, and James M. Smith, State Treasurer of the State of Louisiana, defendants herein, who, for answer to the demand contained in the petition of plaintiffs, say that they deny all and singular the allegations of the same except such as may be hereinafter admitted.

Respondent admits that, in 1880, by Act No. 23 approved March 8th, 1880, the General Assembly of the State of Louisiana authorized the Governor of the State to employ counsel to recover for the State from the Federal Government certain lands, the character of which is fully set out in said act or the value of same in money or scrip of the General Government, and that on the 20th March, 1880, Louis A. Wiltz, the then Governor of the State of Louisiana, entered into a written contract with John McEnery, for the purpose of carrying out the provisions of said act.

Further answering, respondent avers that, in the contract thus entered into, it is provided that in the event of lands being recovered in kind by said John McEnery, the compensation to be received by him for his services should be represented by scrip or certificates to be issued by the Register of the State Land Office locatable upon any lands owned by the State, but respondents aver that they have good reason to believe, and they, therefore, aver, that the Governor of the State aforesaid exceeded the authority conferred upon him by the terms of act No. 23 of the General Assembly of 1888 in thus
29 providing for the issuance of scrip or certificates by the Register of the State Land Office to be delivered to said John McEnery locatable upon such lands in as much as, by said act, it is distinctly declared that the only compensation which said John McEnery could receive was an allowance to be made by the Governor of the State out of such lands, money or scrip as he might recover for the State from the General Government, and, for that reason, respondents aver that the Register of the State Land Office was absolutely without power, right or authority to issue to said John McEnery certificates or scrip locatable upon any lands of the State, and that any scrip or certificates, so issued, were, at the time, have always been, and are not, absolutely null and void and of no effect or value.

Respondents aver further that by Act No. 106 of 1888, approved July 12th, 1888, Act No. 23 of 1888 was repealed and the agreement or contract which had been entered into on the 20th March, 1880, between Louis A. Wiltz, Governor of the State, and John McEnery, thereby terminated and brought to an end in every respect.

Respondents admit that the then Register of the State Land Office in pursuance of the illegal provisions contained in said agreement or contract of 20th March, 1880, authorizing the issuance by him to John McEnery of certificates or scrip locatable on any lands of the State of Louisiana, did issue to said McEnery a large number of such certificates which were made locatable upon vacant land belonging to the State, which already belonged to the State by virtue of her title thereto derived from the General Government under the various acts of the Congress of the United States set out in the petition of plaintiffs, and which had not been recovered to the State by

said John McEnery under the contract entered into between him and Governor Wiltz, and that the certificates thus illegally issued were, thereafter, sold and assigned by said McEnery and were, by the assignees of same, located upon certain public lands of the State, which had not been recovered for the State by said McEnery under the said contract entered into between him and said Wiltz, Governor of the State, who exceeded the authority given to him by the
30 aforesaid act No. 23 of 1888, in agreeing and consenting that said McEnery or his assigns should be given the right to any lands, money or scrip other than such as would be recovered by him from the General Government, and that, after said lands had been so located under said certificates so illegally issued, patents to the same were, in many instances, illegally issued to said assignees signed by the then Governor and Register of the State Land Office.

Respondents aver that they believe it to be true, as alleged by plaintiffs, and they, therefore, allege that the lands described in the petition of plaintiffs were not recovered to the State by said John McEnery under the aforesaid contract and, for that reason, respondents aver that the issuance to him, by the then Register of the State Land Office of the certificates so issued by him for the said lands, as was done, was done illegally and absolutely without right, power or authority in the Register and Governor aforesaid, and that the acts of said Register in so issuing the same were absolutely illegal, null and void and *ultra vires,* and that any and all patents issued upon said certificates to the lands described in the petition, as well as to all other lands of like character belonging to the State were so issued without right or authority on the part of the said Register or the Governor of the State, and their acts in so issuing such patents were at the time, have always been, and are now, absolutely null and void and of no effect and that the said patents have not divested the State of Louisiana of her title in and to said lands.

Respondents admit that, on the 28th March, 1905, plaintiffs did make application to respondents respectively as State Treasurer and State Auditor of public accounts, as alleged by plaintiffs, to enter and acquire from the State of Louisiana the lands which are fully described in the petition, and that plaintiffs, on the same day, made to respondents a tender of one dollar and fifty cents per acre for each and every acre of land so applied for, but that respondents refused to entertain said application and tender for the reasons stated in the petition of plaintiffs.

Further answering, respondents admit that the Legislature
31 of the State of Louisiana did enact No. 85, approved July 7th, 1905, and act No. 86, approved July 6th, 1906, but respondents deny that said acts, or either of them, are unconstitutional, null and void for the reasons and upon the grounds urged and alleged by plaintiffs in the petition herein, but that on the contrary, both of said acts are valid, legal and constitutional and within the power of the legislature of the State of Louisiana to enact, and that the same do not violate or contravene the Constitution of the United States or of the State of Louisiana, as alleged by plaintiffs.

Wherefore, averring that plaintiffs' demand is neither just nor

well founded, respondents pray that the same be rejected and dismissed with costs. And for all and general relief.

(Signed) WALTER GUION,
Attorney General.

Filed Feb'y 14th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

32 *Intervention of Bowman-Hicks Lumber Company.*

In the 22nd Judical District Court of the State of Louisiana, in and for the Parish of East Baton Rouge.

1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDALL, Register, *et al.*

Intervention of Bowman-Hisks Lumber Company.

Your intervenor, the Bowman-Hicks Lumber Company, a corporation organized under and by virtue of the laws of the State of Missouri, domiciled at the City of Kansas City, in said State, of which W. C. Bowman is President, with respect represents:

That it is the owner by purchase in good faith, and for a valuable consideration, in due and regular course or business, of a portion of the lands described in plaintiff's petition, and for which plaintiffs are asserting title; the said lands owned by your intervenor being described as follows, to-wit:

Southwest quarter of southwest quarter of section thirty-two (32*P*, township two (2) south, range two (2) west;

Southwest quarter of northwest quarter, and west half of southwest quarter of section thirty-two (32), township three (3) south, range two (2) west;

West half of northwest quarter, and northeast quarter of southwest quarter of section six (6), township four (4) south, range two (2) west;

West half of west half, and northeast quarter of southwest quarter of section twenty-three (23), and west half of northwest quarter of section twenty-six (26), in township two (2) south, range three (3) west;

West half, and southeast quarter of southeast quarter of section thirty-six (36), and southeast quarter of northwest quarter of section thirty-six (36), in township three (3) south, range three
33 (3) west;

West half of the northwest quarter of section two (2), southeast quarter of northeast quarter and northeast quarter of southwest quarter of section three (3), southeast quarter of northeast quarter of section four (4), southeast quarter of southeast quarter of section fourteen (14), east half of southwest quarter of section fifteen (15), northwest quarter of southwest quarter of section nineteen

(19), west half of northwest quarter of section twenty-two (22), west half of east half, and east half of west half of section twenty-three (23), and southwest quarter of southwest quarter of section twenty-three (23), east half of southeast quarter of section twenty-four (24), southeast quarter of northeast quarter of section twenty-five (25), northwest quarter of northeast quarter of section twenty-six (26) west half of northwest quarter of section thirty-three (33), northwest quarter of northwest quarter of section four (4), north half of northeast quarter of section five (5), northwest quarter of southeast quarter of section seven (7), and east half of southeast quarter of section thirty-three (33), in township four (4) south, range three (3) west;

The west half of west half of section two (2), northeast quarter of northeast quarter of section three (3), and west half of northwest quarter of section eleven (11), in township five (5) south, range three (3) west;

The southwest quarter of southeast quarter of section twelve, (12), the southeast quarter of southwest quarter, and south half of southeast quarter of section twenty-three (23), north half and southwest quarter of northeast quarter of section twenty-four (24) the northeast quarter of the northwest quarter and southwest quarter of northwest quarter, west half of southeast quarter, and southwest quarter of section twenty-four (24), northwest quarter of northeast
34 quarter and south half of northwest quarter of section twenty-six (26), northeast quarter of northwest quarter of section twenty-five (25), in township four (4) south, range four (4) west;

West half of southwest quarter of section twenty-six (26), in township two (2) south, range three (3) west;

Southwest quarter of southeast quarter and southeast quarter of southwest quarter of section ten (10) and southeast quarter of northeast quarter of section ten (10), and west half of northeast quarter of section twenty-21), in township three (3) south, range three (3) west;

West half of northeast quarter of section eighteen (18), in township four (4) south, range three (3) west;

Southeast quarter of southeast quarter of section twelve (12) in township four (4), south, range four west, (4), and southeast quarter of southeast quarter of section thirteen (13), and southwest quarter of southeast quarter of section thirteen (13), and southwest quarter of northeast quarter of section twenty-five (25), in township four (4) south, range four (4) west, in Calcasieu Parish, Louisiana;

The southeast quarter of southwest quarter of section thirty-two (32), and west half and southeast quarter of southeast quarter of section thirty-four (34), in township two (2) south, range two (2) west;

The southwest quarter of southeast quarter and southeast quarter of northwest quarter, and east half of southwest quarter of section thirty-two (32), in township three (3) south, range two (2) west;

The southeast quarter of northwest quarter and east half of southwest quarter of section four (4), and east half of northeast quarter and northeast quarter of northwest quarter of section eight (8), in

township four (4) south, range two (2) west; in Saint Landry Parish, Louisiana, aggregating four thousand two hundred (4200) acres, which lands are worth more than Five thousand dollars, and are a portion of the lands which plaintiffs allege that they have legally entered in the Land Office of the State of Louisiana; said lands being located in the Parishes of Calcasieu and Saint Landry, in your said State;

Your intervenor alleges that said lands were originally purchased by one S. R. Prentiss, more than twenty-three years ago, and have been continuously owned and in the possession of the said S. R. Prentiss down to the 27th day of June, A. D., 1905, at which time your petitioner herein purchased the same from the said S. R. Prentiss, and has been ever since said date the true and legal owner of and in possession thereof; intervenor alleges that said S. R. Prentiss acquired said property from the State of Louisiana by patents issued by the proper officers of the State, which patents were regular and legal in form, and in all the recitals thereof; that said properyy has been in the possession of your appearer and its vendor under said patents for more than twenty-three years, and any defect in consideration thereof is now cured by the presceiption of ten years, which plea of *sub*scription intervenor urges against the plaintiffs herein; that said S. R. Prentiss, intervenor's vendor, the patentee, in each of said patents, sold the lands therein described to your intervenor in the ordinary course of business, and for a valuable consideration.

Intervenor alleges that when the Governor of the State, and Register of the Land Office issued the patents for said land to S. R. Prentiss, the said land was segregated from the public domain, and was not thereafter subject to enter by private parties, all of which facts were well known to the plaintiffs herein, at the time they pretended to have applied for the entry of said lands, and attempted to tender the purchase price thereof; that said lands were
36 not at that time, and had not been since the entry and patent thereof by S. R. Prentiss, subject to entry by private individuals, and any rights pretended to have been acquired by reason of said application for entry could only apply to lands which were subject to entry at the time of such application, and which had not at that time been segregated from the public domain, and plaintiffs are without right to attack collaterally the dealings between the State of Louisiana and the various purchasers or patentees of its public lands, as is done in this action; that said rights can only be attacked by the State of Louisiana in a direct action to annul and set aside the same, and plaintiffs, not having been subrogated to this right held by the State of Louisiana, nor having acquired the same in any other manner, they are without right, or interest or standing, to attack said patents or the title derived thereby, either directly, or indirectly.

Intervenor shows that said patents were issued by the State of Louisiana more than twenty-three years ago; that since the time said patents were issued the lands covered thereby and now owned by your appearer, have been assessed, and taxed by the proper officers, and the owners thereof for each and every year have paid taxes thereon to the State of Louisiana, and to the Parishes in which the

said lands are situated, all of which was done with the fullest knowledge on the part of the General Assembly of the State of Louisiana, the Governor of the State, and the authorities of the State Land Office, of all of which facts the plaintiffs now pretend that said patents should be treated as absolute and incurable nullities.

Your intervenor shows that if the plaintiffs ever acquired any inceptive rights under the attempted entries as set forth in its petition, (the acquisition of which right is denied), such rights were forfeited by the absolute inaction on the part of said plaintiffs between the time of said pretended entries and the filing of this suit, more
37 than one year thereafter, during which time the plaintiffs made no attempt to perfect said pretended entries, and withdrew the money alleged to have been tendered to the Register of the Land Office, which alleged attempted entry and tender intervenor denies was legal or valid in any respect whatever, even if the lands were subject to entry at that time, which they were not, having been previously segregated from the public domain.

Intervenor alleges that there is nothing in the recitals of the patents issued by the State of Louisiana to the above described lands that indicate said patents were in any manner illegal, or void; that the form of said patents are the usual and regular form of patents of the State of Louisiana, and that intervenor was entitled to believe and did believe that said patents were valid and regular and legal, and that the State of Louisiana, having issued a patent, regular in all its terms and recitals, having permitted same to remain unassailed for more than twenty years, during all of which time it caused said lands to be taxed and assessed, and collected and used the taxes collected therefrom, would be estopped from directly assailing same, or attempting to annul said patents, especially when such patents were issued with the full knowledge of the Governor of the State, the General Assembly thereof, the Attorney General of the State, and the Register of the State Land Office, which knowledge was brought to the said officials by the reports required by Section Twenty-nine hundred twenty-two, and Fifteen hundred fifty-seven of the Revised Statutes of Louisiana, all of which were strictly complied with by the respective officials.

That said officials with full knowledge of the above facts did on the 12th day of July, 1888, enact a law known as Act 186 of 1888, by which Act No. 23 of 1880, was abrogated and terminated, provided that same should not take effect until January 1st, 1899, thus recognizing the validity of the contract entered into between the State of Louisiana and John McEnery, and all acts done in the execution of said contract prior to the said 12th day of July,
38 A. D., 1888, during which time the lands hereinabove described were entered and patented by the State of Louisiana, and said patents were outstanding, and in full force and effect on that date.

Your intervenor shows that all of said patents were issued by the proper officers of the State in regular form, and that the signatures thereto of the officials are genuine, and your intervenor, having purchased said lands more than twenty years after the issuance of

said patents, were justified in relying on the regularity and legality thereof, unless the recitals therein themselves showed the patents to be illegal, and that it, being a purchaser relying upon the faith of the various patents issued by the State Government, was not required to make an extended investigation outside of the patents themselves, of the various proceedings prior to the issuance thereof, but had a right to and did rely upon the regularity and validity and terms of said patents themselves, and was not required to search for some iminainary defect which might cast a suspicion upon the integrity of said title, or cause as to the legality thereof.

Your intervenor alleges that it is now beyond the power of the State of Louisiana to set aside or annul said patents, or any of them, which were issued in payment for the so-called McEnery scrip or certificates, because the State has already sold and disposed of all of the lands recovered by and through the efforts of the said McEnery under his contract with the State, thus disabling itself from performing and carrying out the contract of the said McEnery or his assignees and subrogees in the way in which it is pretended in plaintiffs' petition that said contract should have been carried out; therefore neither the State nor anyone on behalf of the State, nor the plaintiffs herein, can attack and annul the said patents issued in payment for the said McEnery scrip, or for the pur-
39 pose of redeeming such scrip or services.

Your intervenor alleges that the settlement with the holders of said McEnery scrip by the Governor and Register of the Land Office, and other officers of the State having jurisdiction in the premises, and the facts being fully known to the General Assembly of the State of Louisiana, to the Governor thereof, and to the Attorney-General, and to the Register of the Land Office, who, with full knowledge of said facts, having, by the sale of the lands actually recovered by the said McEnery rendered it impossible to give the said McEnery or the holders of the certificates or scrip issued to him, one half of the lands actually recovered through his efforts, it is not now within the power of the State to annul or take back the lands which it had actually transferred to the legal holders and owners of such scrip or certificates issued to McEnery and so repudiate the settlements made with the said McEnery and his assignees.

Your intervenor shows that to do this would deprive the said McEnery and his assignees, including your intervenor herein, of their property without just compensation, and due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Your intervenor shows that the action of Frellsen & Company, plaintiffs herein, in attacking your intervenor's title was a wanton and unjustifiable slander of the title of your intervenor to the lands hereinabove described, and has put your petitioner to great cost and damage by compelling it to employ counsel to represent it in this litigation and to incur other large expenses.

Intervenor shows that the plaintiffs herein, having occasioned damage to your intervenor by reason of slandering its title as aforesaid, and intervenor having suffered damage in the sum of Twenty-

five hundred dollars through plaintiffs' unjust and unwar-
40 rantable slander of its title, intervenor herein is entitled to recover from the said Frellsen & Company the said sum of Twenty-five hundred dollars.

Intervenor further shows that in the year 1906, the General Assembly of the State of Louisiana, with full knowledge of the facts incident to the issuance of the patents to the land above described, as well as other similar patents to lands in the State of Louisiana, and that the plaintiffs herein were asserting said patents to be illegal and void for the purpose of removing any doubt which might exist as to the validity of said settlements with the said McEnery or his assignee, the said General Assembly passed what is commonly known as the "Toomer Act" being Acts No. 85 and 86 of the Acts of the General Assembly of the State of Louisiana for the year 1906.

Intervenor alleges that said Act is not a special or local act, but it is a general Act, and is applicable to all cases where any patents of the State of Louisiana were not paid for in money, but by certificates or warrants for scrip, which warrant- or certificate- were alleged not to be legally receivable in payment for such patent, and does not apply exclusively or specially to the lands owned by your intervenor, but to lands patented under entries made with McEnery scrip, and was intended to be and is a general act, and is cons-tutional and valid in all its provisions.

Intervenor alleges that its vendor, S. R. Prentiss was the first applicant for said land, and in the event payment should be adjudged to be insufficient, he being the first applicant therefor, intervenor herein has the right now, upon payment of the required price, to perfect said application, and become the patentee of the lands hereinabove described, which application was made more than twenty years prior to the alleged application by plaintiffs and plain-
41 tiffs herein are without right, interest or authority to enjoin the enforcement of said Acts 85 and 86 of the Acts of the General Assembly of 1906, the effect of which is to enable all persons holding patents the validity of which might possibly be attacked on the ground upon which plaintiffs herein have attempted to collaterally attack the validity of the patents to the lands above described and which are now owned by your intervenor, to settle and buy out all claims of the State by complying with the terms of the said Acts.

Intervenor shows that while it has never doubted the validity of the patents to the land as above described, and does not now doubt the validity thereof, nevertheless, it deems it expedient to at this time settle and extinguish any claims, even if unwarranted in law, that the State might assert against the validity of said patents by complying with the terms of said Acts No. 85 and 86 of 1906.

Intervenor alleges that it has complied with the provisions of said Acts 85 and 86 of 1906, by tendering, for and in the name of S. R. Prentiss, the original patentee, to the proper officers of the State of Louisiana, the sum of Six thousand five hundred ($6500.00) Dollars, being the sum of One and 50/100 dollars per acre for each and every acre of the lands hereinabove described, which tender has been

refused by said officers, and your intervenor herewith offers to comply with the terms of said Act, and deposit in the Registry of the Court, as designated by the Judge of this Honorable Court, the sum of Six thousand five hundred ($6500.00) Dollars, being the sum of One and 50/100 Dollars per acre, for each and every acre of land above described, which tender is not prompted by any fear on the part of your intervenor relative to the validity of said patents, but because it is of interest and great concern to the intervenor, with the least possible delay to settle and place at rest any claims which
42 the State of Louisiana, or parties holding under it might assert; and whereas, the said State has offered to compromise said claims upon complying with the provisions contained in said act, intervenor herein desires to avail itself of said proposition of compromise in accordance therewith.

Intervenor shows that even if the patents to the land now owned by your intervenor, validly and legally paid for by the said McEnery scrip or certificates, (and intervenor does not admit that said patents were not so paid for, but avers that said patents were in fact legally and validly paid for in accordance with the laws in force at that time,) still the application on which said patents were issued, stood and is a valid and legal application and is the first application to enter said lands, and any failure in the legality of said payments, if such failure there was, did not cancel or annul the application, but left the application still standing, and capable of being at any time perfected by making a legal valid payment for said patents, and your intervenor shows that it was competent for the Legislature of the State of Louisiana to treat the application upon which said patents issued as the first valid application for said lands, and, assuming the payment therefor never to have been legally completed, to permit such applicants to perfect their said applications, and obtain valid patents under the terms of said Acts No. 85 and 86, of 1906;

Wherefore, premises considered, intervenor prays that it have leave to file this its petition of intervention; that the same be duly served upon the plaintiffs herein, J. W. Frellsen & Company, and upon the defendants herein, and that after due proceedings, there be judgment rejecting plaintiffs' demands, with costs, and decreeing that the plaintiffs herein have no right or title or standing in Court to sue or annul intervenor's patents, or the patents of its vendor, further, decreeing *that* the intervenor herein, the Bowman-
43 Hicks Lumber Company, to be the true and lawful owner of all of the following described lands, to-wit:

Southwest quarter of southwest quarter of section thirty-two (32), township two (2) south, range two (2) west;

Southwest quarter of northwest quarter, and west half of southwest quarter of section thirty-two (32), township three (3) south, range two (2) west;

West half of northwest quarter, and northeast quarter of southwest quarter of section six (6), township four (4), range two (2) west;

West half of west half, and northeast quarter of soufhwest quarter

of section twenty-three (23), and west half of northwest quarter of section twenty-six (26), in township two (2), south, range three (3) west;

West half, and southeast quarter of southeast quarter of section thirty-six (36), and southeast quarter of northwest quarter of section thirty-six (36), in township three (3) south, range three (3) west;

West half of northwest quarter of section two (2), southeast quarter of northeast quarter and northeast quarter of southwest quarter of section three (3), southeast quarter of northeast quarter of section four (4), southeast quarter of southeast quarter of section fourteen (14), east half of southwest quarter of section fifteen (15), northwest quarter of southwest quarter of section nineteen (19), west half of northwest quarter of section twenty-two (22), west half of east half, and east half of west half of section twenty-three (23), and southwest quarter of southwest quarter of section twenty-three (23), east half of southeast quarter of section twenty-four (24), southeast quarter of northeast quarter of section twenty-five (25), northwest quarter of northeast quarter of section twenty-six
44 (26), west half of northwest quarter of section thirty-three (33), northwest quarter of northwest quarter of section four (4), north half of northeast quarter of section five (5), northwest quarter of southeast quarter of section seven (7), and east half of southeast quarter of section thirty-three (33), in township four (4), south, range three (3) west;

The west half of west half of section two (2), northeast quarter of northeast quarter of section three (3), and west half of northwest quarter of section eleven (11), in township five (5) south, range three (3) west;

The southwest quarter of southeast quarter of section twelve (12), the southeast quarter of southwest quarter, and south half of southeast quarter of section twenty-three (23), north half and southwest quarter of northeast quarter of section twenty-four (24), the northeast quarter of northwest quarter and southwest quarter of northwest quarter, west half of southeast quarter, and southwest quarter of section twenty-four (24), northwest quarter of northeast quarter and south half of northwest quarter of section twenty-six (26), northeast quarter of northwest quarter of section twenty-five (25), in township four (4), range four (4) west;

West half of southwest quarter of section twenty-six, in township two (2) south, range three (3) west;

Southwest quarter of southeast quarter and southeast quarter of southwest quarter of section ten (10), and southeast quarter of northeast quarter of section ten (10), and west half of northeast quarter of section twenty-one (21), in township three (3) south, range three (3) west;

West half of northeast quarter of section eighteen (18), in township four (4) south, range three (3) west;

Southeast quarter of southeast quarter of section twelve (12), in township four (4) south, range four (4) west, and southeast quarter of southeast quarter and southwest quarter of southeast quarter of

section thirteen (13), and southwest quarter of northeast
45 quarter of section twenty-five (25), in township four (4) south, range four (4) west, in Calcasieu Parish, Louisiana;

The southeast quarter of southwest quarter of section thirty-two (32), and west half and southeast quarter of southeast quarter of section thirty-four (34), in township (2) south, range two (2) west;

The southwest quarter of southeast quarter and southeast quarter of northwest quarter, and east half of southwest quarter of section thirty-two (32), in township three (3) south, range two (2) west;

The southeast quarter of northwest quarter and east half of southwest quarter of section four (4), and east half of northeast quarter and northeast quarter of northwest quarter of section eight (8), in township four (4) south, range two (2) west, in Saint Landry Parish, Louisiana, and declaring this intervenor's said title to be legal, valid and unassailable, either by the plaintiffs herein, or by the State of Louisiana, or anyone else, and decreeing that intervenor has a legal and valid title to said lands covered by said patents, independent of the proceedings taken by intervenor under said Act No-. 85 and 86 of 1896; or, in the alternative, in case the Court should be of the opinion that plaintiffs herein have a standing in Court to litigate the question raised by their petition, and should also be of the opinion that the original patents to the land above described were illegal — invalid when issued, and that intervenor did not acquire a good, legal and unassailable title to the lands covered by said patents through purchase thereof from said S. R. Prentiss, but that the title to said lands *were* still v-lid after being acquired by intervenor herein, or that intervenor has no title to said land, or any portion thereof, then that this Court decree said entries of the said S. R. Prentiss to be the first entries or applications made for said lands, and that said Acts No-. 85 and 86 of 1906, be constitutional and valid in all their provisions, and that the provision treating your intervenor as the holder and owner of said patents, and the
46 *intervenor as the holder and owner of said patents, and the* original patentee thereof as the first applicant for said land, that intervenor under its offer to comply with said Acts No-. 85 and 86 of 1906, be decreed to be the first applicant, and as such entitled to the patents for said lands, and that the money herewith tendered be ordered paid over to the proper officers of the State;

Intervenor further prays that its plea of prescription as to plaintiff herein be maintained.

Intervenor further prays that plaintiff, J. W. Frellsen & Company, and said Joseph W. Frellsen and James D. Hill, be condemned *in solido,* to pay to your intervenor the sum of Twenty-five hundred dollars for slander of its title as above stated;

And intervenor further prays for all costs, and for full, general and equitable relief.

____ ____,

By McCOY & MOSS,
Attorneys for Intervenor.

The foregoing petition and prayer being considered, it is ordered that this intervention be filed and service thereof be made according to law. The Clerk is hereby authorized to receive and hold said deposit of $6500.00 subject to further orders of this Court.

Thus done and granted at Chambers on this the 12th day of March, A. D. 1907, at Baton Rouge, Louisiana.

H. F. BRUNOT,
Judge 22nd Jud'l Dist.

N. O., *Mar.* 13, 1907.

Citation waived and service of this petition of intervention is accepted with reservation of all exceptions and other defences to same.

MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.
WALTER GUION,
Att'y General.

Filed March 12th, 1907.
T. E. McHUGH, Clerk.

47 *Intervention of H. J. Lutcher et als.*

Twenty-second Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

To the Honorable, the Judge of said Court:

The petition of intervention of H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown and F. H. Farwell, the said John Dibert having his legal domicil and residence in the City of New Orleans, Parish of Orleans, State of Louisiana, and the said H. J. Lutcher, W. H. Stark, E. W. Brown and F. H. Farwell having their legal domicil and residence in the City of Orange, County of Orange, and State of Texas, with leave of this Honorable Court to intervene in this suit first had and obtained,

Respectfully show,

I.

(*a*) That your petitioners purchased in good faith for a valuable consideration, and in due and regular course of business, the lands which are described with particularity and in detail in the list attached to this petition and made part hereof, marked "Exhibit A."

That they are the owners and holders thereof in fee simple and said lands are worth more than five thousand dollars ($5,000), and are among the lands described in the petition of plaintiffs herein;

and which said plaintiffs assert that they have legally entered in the Land Office of the State of Louisiana; and to which said plaintiffs claim they are entitled to receive patents from the State of Louisiana under the allegations of fact contained in their said petition; said plaintiffs alleging and pretending that the patents and entries
48 of said lands which were made to the authors of your petitioner's title, are absolutely null, void and of no legal effect.

Your petitioners show that it and the authors of its title to said land have been in the peaceable, public, notorious and undisturbed possession of said lands for more than twenty years; and that, during said period, the said lands have been regularly assessed and taxes thereon have been paid by your petitioner, and the authors of your petitioner's title, to the State of Louisiana, and to the parishes in which the said lands are situated; and said taxes so paid on said lands have been appropriated and used by said State and parishes.

(*b*) Your petitioner further shows that the said lands were originally owned by the State of Louisiana, and were alienated and patented by the said State under patents regular and legal in form and in all recitals. Petitioner attaches to this petition, as part hereof, a statement marked "Exhibit B," showing the numbers of the said patents, the names of the patentees, and a clause from said patents, indicating in what manner the said lands were located and paid for.

Your petitioner shows that the said patentees named in said Exhibit B acquired said patents in good faith and in the honest belief that the said patents were legal and valid and were legally and validly paid for. That said patentees sold the titles so acquired by them under said patents; and your petitioner has, in the ordinary course of business, in good faith and for valuable consideration, purchased the lands covered by the said patents, and the rights conveyed by the said patents.

(*c*) Your petitioner further shows that since your petitioner acquired the said lands described in Exhibit A, covered by said patents described in Exhibit B, the plaintiff herein, pretending that the said patents described in Exhibit B were, and are, and always have been, absolutely incurable and indisputable nullities, and without any effect or consequence whatsoever in law, have, in total disregard of the issuance of said patents, assumed to treat the said lands, covered by the said patents as still belonging to the State of Loui-
49 siana, and as still included among the lands offered for sale by the State, under its general statutes; and, acting on this assumption, pretend that they have offered to enter and purchase the said lands from the State of Louisiana precisely as if said patents had never been issued, and did not exist, plaintiffs thereby collaterally attacking the said patents and treating the same as nullities; and the grounds upon which plaintiffs assert that said patents are utterly illegal, null and void, and with no legal consequence or effect whatsoever, are as follows:

First. In the year 1880, the General Assembly for the State of Louisiana passed an Act, known as Act No. 23 of the Acts of the General Assembly for the State of Louisiana for the year 1880, authorizing the Governor of the State of Louisiana to employ counsel to

recover for the State the lands situated in the State of Louisiana, and donated to the State by several acts of Congress for divers purposes; but some of which lands, for various reasons, had not been transferred to the State of Louisiana by the Federal Government up to the year 1880, and some of said lands had been sold by the Federal Government, in disregard of the said donation to the State, so that the State was entitled to receive from the Federal Government scrip or money, in lieu of the lands so sold; said act also authorized the Governor to make such arrangements with counsel employed for his compensation, as he should deem proper, said act reading as follows:

An Act Authorizing the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, or to recover the value of said lands in money or scrip.

SECTION 1. Be it enacted by the General Asembly of the State of Louisiana, that the Governor of the State be, and he is hereby, authorized to take the necessary steps to constitute proceedings, to employ counsel and to make the necessary agreement or agreements to recover for the State the lands situated in the State of Louisiana and donated by several acts of Congress to the State for divers purposes; some of which have been illegally disposed of by the Federal Government, and other portions, though listed to the State, have been improperly suspended or rejected by the Federal Government and the approval to the State refused, or to recover the value of said lands in money, or Government scrip; provided, that the State shall incur no cost or expense in the prosecution of the said claim other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered; the Governor is specially authorized herein to make all agreements and contracts to carry out the purposes of this act.

SECTION 2. Be it further enacted, etc., That any settler under, or holder of a patent from the land office of the United States, or purchaser of the same, under existing laws, shall not be in any manner affected by this resolution.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved March 8, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

And your petitioner further shows that, under the power vested in him by this act, the Governor of the State of Louisiana, L. A. Wiltz, did on March 20, 1880, enter into the following contract with Mr. John McEnery, as counsel employed by him under the said act 23 of 1880, hereinabove just recited, to wit:

51 STATE OF LOUISIANA,
Parish of Orleans:

Be it remembered, that on the 20th day of March, A. D. 1880, I, Louis A. Wiltz, Governor of the State of Louisiana, in pursuance of Act No. 23 of the General Assembly of the State of Louisiana, approved March 8, 1880, and entitled "An Act authorizing the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, and to recover the value of said lands in money or scrip," have on this day made and entered into the following contract and agreement with John McEnery:

Said McEnery promises and agrees to employ his diligent and best efforts to recover for the State all lands donated to her by the General Government as swamp lands, and which have been improperly suspended or rejected by the United States Government, and all lands to which the State has valid claims, and which have been sold or otherwise disposed of by the United States, to the prejudice of the State, or to recover the value of said lands in money or scrip, to be paid or issued by the United States in lieu of lands sold or otherwise disposed of by the Government of the United States to which the State had valid claims; including herein the claims of the State upon the General Government for lands, or their value, for school purposes; for the amounts in money due the State by virtue of the Acts of Congress in relation to Military Bounty Land Warrants, or their locations, and also for internal improvement purposes.

The State of Louisiana, on her part, agrees to pay said John McEnery *fifty per centum* of the *lands, money or scrip recovered,* to be paid as provided in said Act No. 23.

Where *lands in kind* are recovered, the compensation as aforesaid, of said McEnery, shall be represented in *scrip* of
52 *certificates* to be issued by the Register of the Land Office of the State, and *locatable upon any lands owned by the State.*

Thus done and signed the day and date above written.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

(Signed) JOHN McENERY.

And on the same day Governor Wiltz addressed the said McEnery the following letter, to wit:

STATE OF LOUISIANA,
EXECUTIVE DEPARTMENT, *March* 20, 1880.

Hon. John McEnery, New Orleans, La.

SIR: In pursuance of Act No. 23 of the General Assembly of the State of Louisiana, approved March 8, 1880, an authentic copy is hereto annexed, I have contracted with and selected you as suitable counsel to carry into effect said law, and you are fully authorized and empowered in the name and on behalf of the State of Louisiana,

to receipt for all lands, money and scrip to be granted or paid over to this State by the United States, recoverable under said Act No. 23.

Very Respectfully,

(Signed) LOUIS A. WILTZ, *Governor.*

Second. Your petitioner shows that plaintiffs allege and pretend that the clause in said contract reading:

"Where lands in kind are recovered, the compensation as aforesaid, of said McEnery shall be represented in scrip or certificates to be issued by the Register of the Land Office of the State, and locatable upon any lands owned by the State," is utterly null and void.

Your petitioner shows that the first part of said clause,

53 reading:

"Where lands in kind are recovered, the compensation as aforesaid, of said McEnery shall be represented in scrip or certificates to be issued by the Register of the Land Office of the State,"

* * *

is legal and valid and was a proper and legal clause to insert for the purpose of ascertaining regularity, from time to time as work was done under the contract, what compensation had accrued to said McEnery for the work so done by him under the said contract.

Your petitioner shows that the said McEnery entered promptly upon the work required by the contract, and from time to time recovered lands, money or scrip, to which the State was entitled under the said donotions by the Federal Government; and, from time to time, the said McEnery, after making such recoveries, turned in to the Register of the State Land Office, a list of the lands, money or scrip so recovered by him; and on each such occasion the Register of the State Land Office issued a certificate, or several certificates, to the said McEnery, showing the amount of compensation to which the said McEnery was entitled under his said contract for his said recoveries thereunder.

Your petitioner shows that, after the issuance of such certificates, the said McEnery often sold and assigned the same to others, and that eventually the said certificates were redeemed by the State, by the patenting to the said McEnery, or his assigns, of lands of the State, and when the said patents were issued the said certificates were surrendered by the said McEnery or by the assignees.

Your petitioner shows that whenever the land given in exchange for said certificates was a part of the land actually recovered by the said McEnery, the patent therefor is indisputably valid and legal.

Your petitioner shows that the plaintiffs herein contend that where such certificates were redeemed and paid by the patenting to the said McEnery, or his assignees, of lands which the State owned prior to 1880, and which were not recovered for the State by the said McEnery, such patents are absolute, incurable null-

54 ities, and have no legal consequence whatever or effect whatsoever, and that said lands covered by such last described patents are still to be treated as owned by the State, and as included among the lands which the State, under its general statutes, offers

to sell; and, acting upon this assumption and theory, the plaintiffs herein pretend that they went to the Register of the State Land Office in February and March, 1905, as stated in their petition, and then and there tendered to said Register the price of said lands as fixed by the general statutes of the State of Louisiana covering the sale of the public lands of the State; and the plaintiffs pretend that they then and there demanded to be accepted by the Register of the State Land Office as first applicants for and purchasers of said lands, and demanded the issuance to them of patents for said lands, thus wholly disregarding and collaterally attacking the legality and validity of the patents to said lands theretofore issued by the State of Louisiana, and then and now owned by your petitioner herein.

Your petitioner shows that the said pretentions of the plaintiffs herein, as above set forth, are without any foundation in law, for the further following reasons, to wit:—

First. Your petitioner shows, that after the issuance of the State patents described on Exhibit "B," the lands covered by said patents stood segregated from the public domain of the State of Louisiana, and were no longer offered for sale or included among the lands offered for sale under the statutes of the State of Louisiana; and as long as said entries and patents remained uncanceled of record, the effect thereof was to segregate the tracts of land covered by said entried from the lands of the public domain, and preclude the plaintiffs herein, or anyone else, from acquiring any inceptive rights to said lands by virtue of the alleged and pretended applications to enter and purchase the same, or in any other manner—the said applications being utterly ineffectual to vest any rights in the plaintiffs.

Your petitioners show that, after the issuance of said patents described in Exhibit "B," the validity and legality of said patents could be attacked only by the State of Louisiana, and that
55 in a direct action; and neither the plaintiffs herein, nor anyone else, except the State of Louisiana, has any right or standing or interest to attack the said patents either directly or indirectly.

Second. Your petitioner further shows that, as said patents have now been sold by the patentees and have passed into the domain of lands subject to private ownership, and have, after thus being included among lands subject to private ownership, been sold and mortgaged time and again, the State itself cannot now attack or in any manner impugn the validity and the legality of the said patents described on Exhibit "B."

Your petitioner shows that said patents were issued by the State of Louisiana more than twenty-five years ago; that, since the time that said patents were issued, the said lands covered by said patents have been regularly assessed and taxed by the proper authorities, and the owners thereof have paid taxes thereon to the State of Louisiana and to the parishes in which said lands were situated; and all this has been done with the fullest knowledge on the part of the General Assembly of the State of Louisiana, and of the Governor of the State of Louisiana, and of the authorities of the Land Office, of all the

facts by reason of which the plaintiffs herein now pretend that the said patents should be treated as absolute and incurable nullities.

Third. Your petitioner shows that, even if the plaintiffs herein ever had any inceptive rights under its pretended entries of said land made February and March, 1905, (which is denied) still such rights were forfeited by the absolute inaction of the said plaintiffs between the time of said pretended entries and the time of filing this suit, more than one year, during which said plaintiffs made no attempt to perfect said pretended entries and withdrew the money they deposited in the land office for said entries; and petitioner denies that in any case said pretended entries or deposits were legally and validly made, even if said lands had been open for entry, which they were not.

Fourth. Your petitioner denies that the said patents described on Exhibit "B" were illegally issued or are null and
56 void for any reason.

Your petitioner shows that, on four of said patents, it is recited that said patents were *"located per certificate 375, Section 8, Act 75 of 1880"*, which clause affirms that said lands were paid for in cash, under the general law governing the sale of the public lands of the State of Louisiana; and your petitioner shows that, after the State of Louisiana has issued its patent, signed by the Register of the State Land Office and by the Governor of the State of Louisiana, affirming that the lands described in the patents were sold for cash, under the statute authorizing the sale thereof for cash, the State of Louisiana is estopped from questioning the validity of said patents. And your petitioner shows that the fifth of said patents contains a clause alleging that said patent was *"purchased per certificate No. 136, 1880"*.

Your petitioner shows that there is nothing in said clause just quoted, nor in any other clause or recital of such patent, that indicates that said patent was in any manner illegal, null or void; that the forms of said patent is the usual and regular form of the patents of the State of Louisiana, and that petitioner was entitled to believe and did believe that the said patent was valid, regular and legal, and that the State of Louisiana, having issued a patent regular in all of its terms and recitals, and having permitted same to remain unassailed for more than twenty-five years, during all which time it caused said lands to be assessed and taxed, and collected and used the taxes thereon, would be estopped from directly assailing same, or attempting to annul said patent.

Your petitioner shows that the plaintiffs cannot do, either in these proceedings or in any other proceedings, that which the State of Louisiana would not be permitted to do.

And your petitioner shows that, even were the patents read, as some of them do read, "purchased per certificate No — Act 23, 1880," such patents contain nothing illegal and nothing to indicate or give rise to the suspicion that they were illegal.

Your petitioner shows that it has been expressly declared
57 and decided by the Supreme Court of the State of Louisiana, that the Register of the State Land Office was charged with

the duty of issuing scrip or certificates to the said McEnery under the said above mentioned contract, and it has been expressly decided that the said contract of March 20, 1880, made under said Act 23 of 1880, was authorized by said Act and is legal, valid and binding.

Petitioner shows that said decision was rendered in the suit of State *ex rel.* John McEnery *vs.* F. T. Nicholls, Governor of the State of Louisiana *et al.*, reported in 42 Annual 209; and petitioner shows that the said case was originally tried in Division "A" of the Civil District Court for the Parish of Orleans, the Honorable T. C. W. Ellis, Judge; that Judge Ellis in said case gave written reasons for his opinion, and in said written opinion said:

The Court is asked to find in this case:

First. Is the contract made with John McEnery by Governor Wiltz such a contract as was authorized by Act No. 23 of 1880?

The Court finds it is.

Second. The Court finds that there was power in the Legislature to pass said statute, and, while providing for the recovery of State lands, had the right to fix the terms of employment, or to authorize the Governor so to fix them.

Third. The Court finds that there is power in the Register to issue certificates or warrants for the lands so described, after fixing and setting aside the lands coming to the State under the recoveries made by the relator.

Fourth. The Court finds that the land and scrip were donated to the State by several acts of Congress for divers purposes, and that they were recovered for the State through the services of John McEnery, the relator, and that he is entitled to the compensation as provided and stipulated in his contract."

Your petitioner shows that the said defendants in said suit appealed from the decision of Judge Ellis, just mentioned to the Supreme Court of Louisiana, and that the said judgment rendered by Judge Ellis was affirmed by the Supreme Court,
58 and in the opinion rendered by the Supreme Court it said:

"In their answers (of the Governor and Register) there is no charge of illegality, in relator's contract or want of due compliance on his part with all of its terms and requirements. Neither is there any charge of unconstitutionality of the law under which it is made, * * * The rights which relator seeks to enforce flow out of Act No. 23 of 1880, by the terms of which the Governor was selected as the mandatory of the Legislature to carry its will into effect. Without legislative authority, he would have been absolutely powerless to enter into any contract in the premises, with relator or with anyone else. * * * Act No. 23 of 1880 charges that officer with the duty of issuing scrip or certificates to such person as may be employed by the Governor in pursuance of its provisions, for the amount of his compensation when lands are recovered in kind."

Your petitioner shows that the said opinion of the Supreme Court was carefully considered and that in the commencement of its opinion the Supreme Court copied both Act 23 of 1880 and the contract thereunder of March 20, 1880.

Your petitioner shows that it is, therefore, *res adjudicata* binding

upon the State of Louisiana, that certificates could and should be issued by the Register of the State Land Office, under said Act 23 of 1880 and contract of March 20, 1880.

Petitioner pleads *res adjudicata* as to this issue and as to the validity and legality of the said act of the said contract.

Fourth. Your petitioner further shows that the Register of the State Land Office is required by law to furnish every year to the Auditor of the State of Louisiana

"a list of all the lands which may have been entered the preceding year, and the names of the persons entering same, and the respective parishes in which they may be situated."

59 Revised Statutes, Sec. 2922.

And the Register of the Land Office is also required to furnish the Governor of the State of Louisiana with a report of the operations of the Land Office of the State of Louisiana for every meeting of the Legislature; and the Governor is required by law to submit to the Legislature this report of the Register of the Land Office.

Revised Statutes, Sec. 1557.

And the requirements of said laws were regularly complied with.

And in this manner both the Governor and the General Assembly were kept regularly informed of all the dispositions of the lands that were made by the Register of the Land Office.

Your petitioner shows that these reports showed the quantity of land that was patented every year to the *State Agent*, as McEnery was designated under said contract; and, as a matter of fact, both the Governor of the State of Louisiana and the General Assembly of the State of Louisiana were well aware that the certificates issued to John McEnery under his contract were being paid and satisfied by the patenting to said McEnery, or to his assignees, of lands owned by the State of Louisiana prior to 1880, and not recovered by the said John McEnery.

Your petitioner shows that the fact that such knowledge existed is evidenced by the statement of the Attorney General in his answer in the suit entitled State *ex rel.* Mrs. McEnery *vs.* Lanier, Register, reported in 47 Ann. 110, Wherein it is alleged that,

"In violation of one of the provisions of Act No. 23 of 1880, the said State Agent" (as John McEnery was called under his contract), "and his representatives, have unlawfully received, as part of the compensation stipulated by said alleged contract, 87,427.06 acres of valuable timbered lands, which were approved to the State prior to the date of said alleged contract."

And your petitioner shows that, notwithstanding their full

60 knowledge of these facts, neither the Attorney General of the State of Louisiana, nor the Governor of the State of Louisiana, nor the General Assembly of the State of Louisiana, ever took steps or ever have to this day taken any steps to annul or avoid a single one of the patents issued to John McEnery or the assignees of his certificates, and paid for with lands approved to the State of Louisiana prior to the date of the contract with McEnery; that said patents have been all along bought and sold without any intimation by the

State that they were illegal, and without any proceedings on the part of the State or its officials to have them declared illegal. And your petitioner pleads that the State is now estopped, by reason of its said conduct and acquiescence, from attacking or attempting to annul said patents.

Fifth. Your petitioner further shows that the General Assembly of the State of Louisiana, so far from contesting the legality and validity of the patents issued to John McEnery or the assignees of his certificates, and paid for by the patenting to said McEnery, or his assignees, of lands owned the State of Louisiana prior to the date of said contract with McEnery, has, by the clearest and most incontestable implication admitted the validity and legality of such patents.

Your petitioner shows that on July 12, 1888, the General Assembly of the State of Louisiana passed Act No. 106 of 1888, to abrogate and terminate the said contract of March 20, 1888, with the said John McEnery, and to repeal said Act 23 of 1880; said Act 106 reading as follows:

SECTION 1. Be it enacted, etc., That Act 23 of the regular session of the General Assembly of the year 1880, approved March 8, 1880, and entitled "An Act to authorize the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, or to recover the value of said lands in money or scrip," *Be, and the same is hereby, repealed.*

61 SECTION 2. Be it further enacted, etc., *That the act or* agreement made between Louis A. Wiltz, Governor of the State, and John McEnery, made March 20, 1880, purporting to be under the authority of said Act No. 23, *is hereby abrogated and terminated.*

SECTION 3. Be it further enacted, etc., *That this Act shall not take effect until January 1, 1889.*"

Your petitioner shows that Section 3 of said Act, declaring that said Act, *"shall not take effect until January 1, 1889"* clearly implies that, *up to that date,* the contract of March 20, 1880, *should stand in full force and effect, neither abrogated nor terminated.*

Your petitioner shows that said Act 106 of 1888 was passed in consequence of the objections made by the then Attorney General to the said Act and contract, and in consequence of a great deal of discussion in regard to said Act No. 23 of 1880, and said contract of March 20, 1880, the provisions of which were generally and widely known.

Petitioner shows that, after thus admitting the legality and the validity of the said act, and of the said contract, and providing that same should remain in full force and effect until January 1, 1889, the Legislature of the State of Louisiana has ratified and adopted the said act and contract made thereunder, and is now estopped from attacking same, or attempting to annul and avoid the patents issued thereunder.

Your petitioner shows that where patents are issued by the proper officer of the Government, in regular form and signed by the proper

officers, parties who purchase such patents are justified in relying on the regularity and legality of said patents, unless the recitals therein themselves show the patents to be illegal; that the purchasers of the patents issued by the Government are not required to make any investigation outside the patents, but may rely upon the terms and recitals of the patents themselves.

62 Your petitioner shows that it was not bound to make a searching examination, or any examination, into the facts upon which the patents issued, nor to hunt for something to cast a suspicion upon the integrity of the title, nor for grounds of doubt.

Sixth. Your petitioner further shows that not even the State of Louisiana can now attack or attempt to annul the said patents described on Exhibit "B", nor any other patents paid for with the so-called McEnery scrip or certificates, because the said State has already sold and disposed of all the lands recovered by the said McEnery under the said contract, and after thus disabling itself from performing and carrying out the contract with the said McEnery, in the way in which it is now pretended by the plaintiffs herein and the said contract ought to have been carried out, neither the State nor any one on behalf of the State, nor the plaintiffs herein, can attack and annul the said patents actually issued to the said McEnery.

Your petitioner shows that the settlement with the said McEnery having been made through a long series of years, by the Governor and Register of the Land Office, and other officers of the State having jurisdiction in the premises, and the facts being fully known to the General Assembly of the State of Louisiana; and the State having by the sale of the lands, actually recovered by McEnery, rendered it impossible to give the said McEnery one-half of the exact lands which he recovered, it is not now competent for the State to annul and take back the lands which it actually transferred to the said McEnery, or his assignees, and so repudiate all settlements with the said McEnery and his assignees. Your petitioner shows that to do this would deprive the said McEnery or his assignee including your petitioner, of their property without just compensation and due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

II.

Seventh. Your petitioner shows that the action of Frellsen & Company, the plaintiffs herein, in attacking petitioner's title, was a wanton and wholly unjustifiable slander of the title of your petitioner to the said lands described in Exhibit "A", and has

63 put your petitioner to great cost and damaged your petitioner by compelling it to employ counsel to represent it in this litigation and to incur other large expenses.

Petitioner shows that this litigation is a wholly unwarrantable and utterly unjustifiable slander of your petitioner's title to said lands, and that the plaintiffs herein ought to be made to pay your petitioner the damages which your petitioner has suffered by reason of the said action of said plaintiffs.

Petitioner shows that they have been damaged in the sum of $5,000 through plaintiffs' said unjust and unwarrantable slander of petitioner's title to the said lands, and that plaintiffs herein, Frellsen & Company, should be condemned to pay to your petitioner the said sum.

III.

Your petitioner shows that in the year 1906, certain persons attempted to induce the General Assembly of the State of Louisiana to pass an act instructing the Attorney General of the State to bring suit to set aside all patents which, upon investigation of the records of the Land Office of the State, should appear to have been issued in exchange for, and to have been paid with, certificates issued to John McEnery under his said contract, where said lands had been acquired and owned by the State of Louisiana prior to the making of said contract, and had not been recovered by the said John McEnery.

Your petitioner shows that, on full consideration of the matter thus brought before the General Assembly, and in view of the fact that there were other cases in which the patents of the State of Louisiana for lands had been issued in exchange for what were by some persons regarded and asserted to be illegal and void certificates of scrip, and in view of the fact that there was great doubt as to the existence of any right on the part of the State of Louisiana to invalidate said patents the said act was not passed by the General Assembly of the State of Louisiana, but, in lieu thereof, there was passed what is known as the "Toomer Act", being Act
64 No. 85 of the Acts of the General Assembly of the State of Louisiana for the year 1906, said act being as follows:

An Act "Declaring that present holders and owners of patents for public lands, issued by the State of Louisiana, their hears, assignees or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said patents, where the said patents were not paid for in money, but were paid for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees, of said patents to validate and perfect their title to the lands covered by such patents, or to any part or sub-division of such lands, within one year from the date of passage of this act, by paying therefor in cash the price of one dollar and fifty cents per acre.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That where the State of Louisiana has issued for its lands patents, signed by the Governor of the State and by the Register of the State Land Office, and purporting on their face to have been paid for by certificates or warrants of given numbers, and where certificates or warrants so referred to as having been given in payment for the patents are, in fact, certificates or warrants for scrip, which scrip, for any reason was not legally receivable in payment for such patents, in such cases, the present holders and owners of the patents, their heirs, assignees or transferees, shall be confirmed

as applicants in the State Land Office for the lands covered by such patents, or for any part or sub-division of such lands, from the date on which said patents were issued, and shall be entitled to perfect and validate their title to the lands covered by their patents, or to any part or sub-division of such lands, within one year from the
65 date of passage of this act, by paying in cash to the State the price of one dollar and fifty cents per acre; said payments shall be made in the names of the original patentees, and the Register of the State Land Office is hereby directed to issue the proper orders to the State Treasurer, who shall receipt for said payments; and, on making said payments, the said patents shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

Your petitioner shows that said act is not a special or local act, but is a general act, and is applicable in all cases where any patents of the State of Louisiana were not paid for in money, but by certificates or warrants for scrip which were not, or were alleged not to be, legally receivable in payment for such patents.

That said act does not apply exclusively or specially to the said McEnery patents, and was not intended to apply exclusively to such patents; that said act is a general act and is constitutional and valid in all its provisions, especially in the provision treating the present holders and owners of said patents, as, at any rate, the first applicants for the land covered by said patents, even if the payment therefor be held to be illegal; and the plaintiffs herein are without right, interest or authority to enjoin the enforcement of said act.

And petitioner shows that the effect of this act is to enable all persons holding patents, the validity of which might possibly be attacked on the grounds on which the plaintiffs herein have collaterally attacked said patents now owned by your petitioners, to settle and buy out all claims of the State, by complying with the terms of said act.

Your petitioner shows that, while it never doubted the validity of its patents described on Exhibit "B", attached to this petition, nevertheless, your petitioner deemed it expedient to at once settle and extinguish any claims, even though not founded in law or justice, that the State might assert against the validity of said patents, by complying with the terms of said act.

Your petitioner has, therefore, offered to comply with the terms of said act 85 of 1906, not because your petitioner believes
66 that its said patents are invalid, but because it is of interest and great concern to petitioner, with the least possible delay, to settle the said possible (though never expressly asserted) claims of the State, and to avert the implied threat of the State of Louisiana, that if its said offer of compromise, as contained in said act, is not accepted suit will be brought by the State to invalidate and set aside the said patents.

Your petitioner shows that, even if the patents owned by your petitioner were not validly and legally paid for by the said McEnery scrip (and petitioner does not admit that said patents were not so

paid for, but avers that said patents were in fact legally and validly paid for in money or otherwise), still, the application on which said patents issued, stood as valid and a legal and valid application, and a failure legally to pay for said patents, if such failure there was, did not cancel or annul the application, but left the application still and always standing and capable of being at any time perfected by making a legal and valid payment for the said patents; and your petitioner shows that it was competent for the Legislature of the State of Louisiana to treat the application upon which said patents issued as the first and valid application for said lands; and, assuming the payments therefor never to have been legally completed, to permit said applicants to perfect their applications, and to obtain patents under the terms of said Act 85 of 1906.

Premises considered, petitioner prays: That it have leave to file this petition of intervention herein, and that the same be duly served on the plaintiffs herein, J. W. Frellsen & Company, and upon the defendants herein, and that, after due proceedings, there be judgment rejecting the plaintiffs' demands herein, with costs; and decreeing that the said plaintiffs herein have no right, title nor standing in court to sue to annul your petitioner's said patents; further decreeing that the said patents of your petitioner, as in Exhibit "B"
hereto annexed, are legal and valid and unassailable, either
67 by the plaintiffs herein or by the State of Louisiana; and
decreeing that petitioner has a legal and valid title to said lands, covered by said patents, independent of the proceedings taken by petitioner under said Act 85 of 1906; and, in the alternative, and in case this Court should be of the opinion that the plaintiffs herein have any standing in Court to litigate the question raised — the pleadings of the plaintiffs, and should also be of the opinion that the original patents described on Exhibit "B" were illegal and invalid when issued, and that plaintiffs did not acquire a good, legal and unassailable title to the lands covered by said patents through the purchase thereof, but that said patents were still void, after being acquired by petitioner; and that petitioner had no legal title to said land on said patents, then that this Court decree that said Act 85 of 1906 to be constitutional and valid in all of its provisions, and that the provisions treating your petitioner as the holder and owner of said patents, and the original patentees as the first applicants for said lands, is valid, legal and constitutional, and that petitioner under its offer to comply with said Act 85 of 1906, is to be deemed the first applicant and is to be entitled to patents for said lands.

Your petitioners further pray that said plaintiffs, J. W. Frellsen & Company, and the said Joseph W. Frellsen and said James D. Hill, be condemned, *in solido*, to pay to your petitioners the sum of Five Thousand Dollars damages as above stated.

And your petitioners further pray for all equitable and general relief to which they may be entitled in the premises.

(Signed) HOLLAND & HOLLAND &
PUJO, MOSS & SUGAR,
Att'ys for Intervenors.

Order.

Twenty-Second Judicial District Court in and for the Parish of East Baton Rouge, Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
68 A. W. CRANDELL, Register, *et al.*

Let this Petition of Intervention be filed and served as prayed for and according to law.

Thus given and granted by me officially, at Baton Rouge, Louisiana, this 14th day of March, A. D. 1907.

(Signed) H. F. BRUNOT,
Judge 22nd Judicial District.

Filed March 14th, 1907.

(Signed) T. E. McHUGH, *Clerk.*

69 *Petition of Intervention of Mrs. M. A. Gueydan et al.*

State of Louisiana, 22nd Judicial District Court, Parish of East Baton Rouge.

#1093.

J. W. FRELLSEN
vs.
A. W. CRANDELL ET AL.

To the Honorable H. F. Brunot, Judge of said Court:

The joint petition of Intervention of

(1) Henry L. Gueydan, a resident of the Parish of Vermillion, in this State,

(2) Mrs. Amelie Gueydan wife of Alfred Amar,

(3) Mrs. Marguerite Gueydan wife of Louis Rauzier,

(4) Mrs. Cecile Gueydan, wife of C. E. J. Fatou, as well as of said,

(5) Alfred Amar,

(6) Louis Rauzier, and

(7) C. E. J. Fatou, for the purpose of authorizing their said wives, and of

(8) Mrs. Amelie Montagne Gueydan, widow of Jean Pierre Gueydan, all of whom reside in and are domiciled in the Republic of France, filed herein with leave of court, shows with respect:

That your petitioners are the holders and *bona fide* owners and possessors of the following described property:

The north west quarter and the west half of the north east quarter of section twenty-five, and the north half of section twenty-six and the east half of the north east quarter of section twenty-seven, all in township twelve, south range two, west, La. Meridian, containing Six Hundred, forty six and 27/100 acres.

The north half of section twenty three and the north half of section twenty four, township twelve, south range two, west, La. Meridian, containing six hundred, forty six and 41/100 acres.

The north west quarter of the north east quarter and the north half of the north west quarter of section twenty seven town-
70 ship twelve, south range two, west, La. Meridian, containing One Hundred Twenty One and 18/100 acres.

That the said property is embraced and included in the lists of lands described in the petition of the plaintiffs herein, for which the plaintiffs pretended that they have made entry and application and which they have endeavored to acquire by application made to the defendants herein. That your Intervenors having acquired said land by purchase, by inheritance and by legal succession from former owner or owners thereof, and that petitioners and their authors hold and held the said land by virtue of patents issued by the State of Louisiana of the following numbers and dates to-wit:

Patent No. 4752 purporting to be issued under Section 8, Act 75 of 1880, issued on the 27th day of September, 1882 recorded in Record of Patents Volume 21, page 289; Patent number 3931 purporting to be issued under act 75, approved on April 7th, 1880, issued on November 8, 1880 and recorded in record of Patents Volume 20, page 184, both of said patents being duly registered in the Conveyance office of the Parish of Vermillion where said lands are situated; besides other patents to be more particularly described and evidenced at the trial hereof.

That petitioners and their authors purchased the said lands in good faith, paying therefor full value, and that the patentee or patentees of the said land were likewise in good faith and complied in good faith with the laws of the State relative to patents. That the said lands are of a value exceeding Five thousand dollars ($5000); that your petitioners and the authors of their title, have been in open, peaceable, public and uninterrupted possession of said lands for more than twenty years and have made and erected valuable improvements and buildings thereon.

Intervenors further show that their patents are regular in form and neither petitioners nor their authors had any reason to believe, or did or do believe, that the said patents were affected with any illegality, invalidity or irregularity whatsoever, but believed and believe that the same were legal and valid in every respect.

Your intervenors further show that the right of the State to issue the patents to the land above described and owned as aforesaid by your petitioners, having been called in question and an application having been made by the plaintiffs to enter the said land and thereby annul the aforesaid patents and the title of your intervenors to said lands, the State of Louisiana at the Session of 1906, passed Act 85, which, for greater certainty is made part of this petition of inter-

vention, declaring that the present holders and owners of patents for public lands issued by the State of Louisiana, or their heirs, assignees or transferees, be confirmed as applicants for said lands from the date of the issuance of said patents and permitting them to validate and perfect their titles to the same by the payment in cash to the State, the sum of One dollar and fifty cents per acre in the names of the original patentees, and Intervenors in consequence of the said act, and in consequence of question having been raised as to the perfect sufficiency and validity of their title, and desiring if possible to avoid litigation, complied with the requirements of the said act by actually paying to the Register of The State Land Office, as prescribed in the aforesaid act 85 of 1906, the sum of one dollar and a half, for each and every acre of the aforesaid land, and the said Register received the said sum and issued to your petitioners receipts for the same, copies of which are hereto attached as
71 part, the said payments being made and receipts obtained before the plaintiffs filed their present suit or obtained the injunction which was sued out herein, and petitioners show that while not doubting the validity of their title, or in any wise believing the same to be illegal or defective, yet deeming it prudent and desiring to escape the vexation of litigation, made the payments aforesaid and therefore claim for themselves the benefits of the provision and immunities granted in the aforesaid Act 85 of 1906.

Now your petitioners further show that the plaintiffs herein have no property interest whatever in the land referred to, and are absolutely without right to institute these proceedings but that the Patent of the State of Louisiana was a full conveyance by the State of all her right, title interest in and to the land referred to, which thereby became permanently severed from the public domain and the said patents cannot be revoked or set aside except in judicial proceedings instituted before the proper tribunals in the name and on behalf of the State.

Petitioners further aver that the State of Louisiana herself cannot institute any action to annul these patents without offering to restore the consideration she has received therefor, and that the State of Louisiana herself furthermore could not annul these patents for the following reasons:—

(1) That heretofore to-wit, in the matter of the State *ex rel.* John McEnery *vs.* F. T. Nichols, Governor of the State of Louisiana *et al.*, reported in 42, A. 209, the question of the legality and constitutionality *vel non* of the act under which the aforesaid patents issued and the right of the Register of the Land Office to issue the scrip or certificates upon which said patents were issued, was recognized and your petitioners plead the said decision as *res adjudicata* and as estoppel against the State of Louisiana from herein or ever hereafter questioning the validity of the said certificate or the legality and validity of the aforesaid patents.

(2) That the Legislature of the State of Louisiana during its session of 1888 was called upon to consider and pass upon both Act 23 of 1880 and the contract executed by Louis A. Wiltz then Governor of the State of Louisiana in pursuance thereof and the

State Legislature enacted Act 106 of the Session of 1888 which provides as follows:—

"SECTION 1. Be it enacted, etc. That Act 23 of the "regular session of the General Assembly of the year 1880, approved March 8, 1880 and entitled "An act to authorize the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, or to recover the value of said lands in money and scrip," Be, and the same is hereby repealed.

"SEC. 2. Be it further enacted, etc., That the Act or Agreement made between Louis A. Wiltz, Governor of the State and John McEnery, made March 20, 1880, purporting to be under the authority of said Act No. 23, is hereby abrogated and terminated.

"SEC. 3. Be it further enacted, etc., That this Act Shall Not Take Effect Until January 1, 1889.

That said Act 106 of 1888 expressly provided that both Act 23 of 1880 and the aforesaid agreement made in pursuance thereof should after a certain time, be abrogated and terminated, but the said Act expressly provided not only that Act 23 of 1880 should not stand repealed until about six months after the passage of the said act, but furthermore provided that the contract made by the Governor of the State of Louisiana with said John McEnery
72 should also have full force and effect until about six months after the passage of the said repealing act. That by thus giving the said John McEnery six months to continue recovering lands, obtaining scrip or certificate therefor and locating such scrip upon any land owned by the State of Louisiana, although not recovered by John McEnery, the said State thus expressly ratified and confirmed the aforesaid agreement of Governor Wiltz. That the said John McEnery and the officers of the State of Louisiana and the State of Louisiana herself are thereby forever estopped from questioning the validity of the said contract, or the legality of any acts done by her officers pursuant to the provisions of the said act and the agreement made thereunder and especially is she estopped from questioning directly or indirectly the validity and regularity of the patents issued by her and above referred to.

Now your inte-venors show that the Legislature of the State of Louisiana in 1880 adopted Act known as Act No. 23 of the General Assembly of that year authorizing the Governor of the State to take the necessary step to recover for the State the lands situated within her borders and donated by the several acts of Congress and authorizing said Governor to employ counsel and make the necessary agreement or agreements to carry out the provisions of the act; that the said Governor employed John McEnery and made an agreement with him in execution of the said authority, and the said McEnery for years acted as the attorney and counsel and state agent for the State of Louisiana in recovering and obtaining title to said lands and rendered vast services to the State of Louisiana under his contract. The said McEnery turned over to the State her share of the land and obtained certificates showing the amount or quantity of land to which he was entitled and that such certificates gave to McEnery the right either to take the land himself or to transfer

the certificates to others in order that they might acquire said land; that in either case the State of Louisiana issued patents to the land and retired and cancelled whatever scrip or certificates she received in payment of the said land, and all these transactions were carried on openly and publicly, were recorded in the books as required by the Revised Statute of the State of Louisiana and Annual reports thereof made to the Legislature, of the State and have been fully known to the Attorneys General of the State, and were fully known to all persons, to the officials of the State and the members of the Legislature when the aforesaid act of ratification known as No. 106 of 1888 was adopted, for all of which reasons and others to be assigned the plaintiffs herein cannot treat as nullities the patents issued as above stated, and have no right to proceed in the manner attempted in making entry and application for the said lands; but that if any inchoate rights were ever acquired the same were lost by reason of their delay in perfecting their application and by their withdrawal of the money which they pretend and allege they tendered.

That neither of the patents hereinabove referred to as the source of inte-venor's title is in any respect irregular or so far as its recitals go, bears any relation to or connection with the contract above referred to between Governor Wiltz and John McEnery, but that the lands so patented appear as per one certificate, to have been *purchased* as per act 75 of 1880 of the State of Louisiana and the others to have been located according to section eight of the said Act 75 of 1880. That the form of said patents is usual, regular and proper in all respects and the said patents are in every respect, legal and valid and the lands covered by the same absolutely conveyed by the State of Louisiana. That inte-venors and their authors have regularly paid taxes to the State of Louisiana which lands have been assessed as private property for more than twenty years and neither the State of Louisiana nor the plaintiffs can treat the same as a part of the public domain, the State being by her conduct, estopped from so doing. That even where the State of Louisiana
73 through her proper officials had full knowledge of the fact that in some instances McEnery or his assigns had located scrip on lands not recovered by him, the said State has taken no steps to set aside said sale but having for many years allowed such titles to stand after acquiring such knowledge is estopped now to question the said title.

Now inte-venors further aver that all parties to whom such patents as are above described were issued or to whom certificates of entry were issued, were in fact and in law and always have been, the first applicants to enter and purchase the lands described in such patents or certificates of entry, from the State and in any event, and at the worst they should now be treated as the first applicant for said lands the plaintiffs consequently being without right to make application to enter the same lands.

Inte-venors further aver that where certificates of entry above referred to were located upon lands other than those recovered by John McEnery, they could unquestionably have been located legally upon a like quantity of lands which had been so recovered by him

and that such lands had a considerable value, and such certificates even when restricted properly, had a like and considerable value; that the State of Louisiana retired and cancelled such scrip and extinguished a corresponding obligation when she located the same upon other lands. That now having parted with the share, interest or portion of the lands which would have belonged to John McEnery (or else still owning the same) she has received and did receive consideration for the lands other than those recovered by John McEnery for which she has issued patents, and it is right, equitable and necessary on the part of the State to restore such consideration or account for the same before she could take any proceedings to annul existing patents, and to do so would deprive your inte-venors of their property without just compensation and without due process of law in violation of the 14th Amendment of the Constitution of the United States.

Inte-venors aver that the plaintiffs herein well knew that the State of Louisiana had issued patents to all the lands which they sought to enter and had parted with her title thereto and was without power to consider their entry of same such lands no longer being subject to entry and that no attempted entry would avail them. The State having issued patents to the authors of inte-venors, it was impossible for the plaintiffs to acquire any interest in the land covered by those patents or any vested rights in relation thereto until said patents had been revoked and set aside; and it was within the power of the Legislature of the State to dispose of plaintiffs' application in any manner it saw fit, and to confirm inte-venors' claim and title.

Inte-venors deny that Acts Nos. 85 and 86 of the General Assembly of 1906, are illegal or unconstitutional, but specially aver the same to be legal and constitutional in every respect.

Your inte-venors deny each and every allegation in the plaintiffs' petition unless specially admitted herein and reserve their right to claim from said plaintiffs the damages which they have suffered by reason of their attack upon inte-venors' title and disturbance of their possession.

Inte-venors plead the prescription of ten years against plaintiffs' action and in support of their title.

74 Wherefore inte-venors pray for leave to file this petition; for citation of all proper parties; that, after due proceedings, their be judgment herein decreeing that plaintiffs have no right or cause of action and no standing herein or right, title or interest to assert herein, and especially to affect, attack, invalidate or annul, inte-venors' title, that petitioners' title and patents above described be decreed to be valid and legal; that it be further decreed that neither the plaintiffs nor the State have any right to attack said titles which should be declared legal and sufficient; or in the alternative, in case it be determined that said patents or any of them were originally irregular, illegal or invalid, that the same be declared curable and cured by virtue of the provisions of Acts 85 and 86 of 1906 aforesaid and the action taken by inte-venors and the payment of the money by said inte-venors as hereinabove described; and that in any event,

inte-venors be recognized and decreed as the first applicant for the said lands; that the aforesaid Acts Nos. 85 and 86 of 1906 be decreed legal and constitutional and that inte-venors be decreed to have validated and perfected their said titles (if otherwise imperfect or insufficient) by compliance with the provisions of said acts.

That their plea of prescription herein filed be maintained; and inte-venors pray for general and equitable relief and all needed orders.

(Signed) TITCHE & ROGERS,
Attorneys for Inte-venors.

Order.

Let this petition of Intervention be filed and served as prayed for and according to law.

Thus given and granting by me officially, at Baton Rouge, Louisiana, on this 23rd day of March, A. D. 1907.

(Signed) H. F. BRUNOT,
Judge 22nd Judicial District.

Service accepted and citation waived; all other rights & exception reserved.

New Orleans March 20th, 1906.

(Signed) WALTER GUION,
Att'y General, Counsel for Defendants.

(Signed) MORGAN & MILNER,
Att'ys for Pl'f.

N. O. Mar. 22, 1907.

Filed March 23rd, 1907.

(Signed) T. E. McHUGH, *Clerk.*

75 *Intervention of the Vermillion Developement Company.*

Twenty-Second Judicial District Court, in and for the Parish of East Baton Rouge, Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

The petition of Intervention of the Vermillion Development Company, a corporation organized under the laws of the State of Louisiana, and having its legal domicil in the City of New Orleans, Parish of Orleans, State of Louisiana, with leave of this Honorable Court first had,

Respectfully shows

(a) That your petitioner purchased in good faith for a valuable

consideration, and in due and regular course of business, the lands which are described with particularity and in detail in the list attached to this petition and made part hereof, marked "Exhibit A."

That the said lands described in Exhibit "A" are worth more than Three Thousand Dollars ($3,000), and are among the lands described in the petition of plaintiffs herein; and which said plaintiffs assert they have legally entered in the Land Office of the State of Louisiana; and to which said plaintiffs claim they are entitled to receive patents from the State of Louisiana under the allegations of fact contained in their said petition; said plaintiffs alleging and pretending that the patents and entries of said lands, which were made to the authors of your petitioner's title, are absolutely null, void and of no legal effect.

Your petitioners show that it and the authors of its title to said land have been in the peaceable, public, notorious and undisturbed possession of said lands for more than twenty years; and that,
76 during said period, the said lands have been regularly assessed and taxes thereon have been paid by your petitioner, and the authors of your petitioner's title, to the State of Louisiana, and to the parishes in which the said lands are situated; and said taxes so paid on said lands have been appropriated and used by said State and parishes.

(*b*) Your petitioner further shows that the said lands were originally owned by the State of Louisiana, and were alienated and patented by the said State under patents regular and legal in form and in all recitals. Petitioner attaches to this petition, as part hereof, a statement marked "Exhibit B," showing the numbers of the said patents, the names of the patentees, and a clause from said patents, indicating in what manner the said lands were located and paid for.

Your petitioner shows that the said patentees named in said exhibit "B" acquired said patents in good faith and in the honest belief that the said patents were legal and valid and were legally and validly paid for. That said patentees sold the titles so acquired by them under said patents; and your petitioner has, in the ordinary course of business, in good faith and for valuable consideration, purchased the lands covered by the said patents, and the rights conveyed by the said patents.

(*c*) Your petitioner further shows that since your petitioner acquired the said lands described in Exhibit "A" covered by said patents described in Exhibit "B," the plaintiff herein, pretending that the said patents described in Exhibit "B" were, and are, and always have been, absolutely incurable and indisputable nullities, and without any effect or consequence whatsoever in law, have, in total disregard of the issuance of said patents, assumed to treat the said lands, covered by the said patents as still belonging to the State of Louisiana, and as still included among the lands offered for sale by the State, under its general statutes; and, acting on this assumption, pretended that they have offered to enter and purchase the said lands from the State of Louisiana, precisely as if said patents had never been issued, and did not exist, plaintiffs thereby collaterally
77 attacking the said patents and treating the same as nullities; and the grounds upon which plaintiffs assert that said

patents are utterly illegal, null and void, and with no legal consequence or effect whatsoever, are as follows:

First. In the year 1880, the General Assembly for the State of Louisiana passed an act, known as Act No. 23 of the Acts of the General Assembly for the State of Louisiana for the year 1880, authorizing the Governor of the State of Louisiana to employ counsel to recover for the State the lands situated in the State of Louisiana, and donated to the State by several Acts of Congress for divers purposes; but some of which lands, for various reasons, had not been transferred to the State of Louisiana by the Federal Government up to the year 1880, and some of said lands had been sold by the Federal Government, in disregard of the said donation to the State, so that the State was entitled to receive from the Federal Government scrip or money, in lieu of the lands so sold; said act also authorized the Governor to make such arrangements with counsel employed for his compensation, as he should deem proper, said act reading as follows:

An Act authorizing the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, or to recover the value of said lands in money or scrip.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, that the Governor of the State be, and he is hereby, authorized to take the necessary steps to institute proceedings, to employ counsel and to make the necessary agreement or agreements to recover for the State the lands situated in the State of Louisiana and donated by several acts of Congress to the State for divers purposes; some of which have been illegally disposed of by the Federal Government, and other portions, though listed to the State, have been improperly suspended or rejected by the Federal Gov-
78 ernment and the approval to the State refused, or to recover the value of said lands in money, or Government scrip; provided, that the State shall incur no cost or expense in the prosecution of the said claim other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered; the Governor is specially authorized herein to make all agreements and contracts to carry out the purposes of this act.

Section 2. Be it further enacted, etc., That any settler under, or holderd of a patent from the land office of the United States, or purchaser of the same, under existing laws, shall not be in any manner affected by this resolution.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved March 8, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

And your petitioner further shows that, under the power vested in him by this act, the Governor of the State of Louisiana, L. A. Wiltz, did on March 20, 1880, enter into the following contract with Mr. John McEnery, as counsel employed by him under the said Act 23 of 1880, hereinabove just recited, to wit:

STATE OF LOUISIANA,
Parish of Orleans:

Be it remembered, that on this 20th day of March, A. D. 1880, I, Louis A. Wiltz, Governor of the State of Louisiana, in pursuance of Act No. 23 of the General Assembly of the State of Louisiana, approved March 8, 1880, and entitled "An Act authorizing the Governor of the State of Louisiana to employ counsel to as-
79 sert the rights of the State to lands donated to the State by the Federal Government, and to recover the value of said lands in money or scrip," have on this day made and entered into the following contract and agreement with John McEnery:

Said McEnery promises and agrees to employ his diligent and best efforts to recover for the State all lands donated to her by the General Government as swamp lands, and which have been improperly suspended or rejected by the United States Government, and all lands to which the State has valid claims, and which have been sold or otherwise disposed of by the United States, to the prejudice of the State, or to recover the value of said lands in money or scrip, to be paid or issued by the United States in lieu of lands sold or otherwise disposed of by the Government of the United States to which the State had valid claims; including herein the claims of the State upon the General Government for lands, or their value, for school purposes; for the amounts in money due the State by virtue of the Acts of Congress in relation to Military Bounty Land Warrants, or their locations, and also for internal improvement purposes.

The State of Louisiana, on her part, agrees to pay said John McEnery *fifty per centum* of the *lands, money or scrip recovered,* to be paid as provided in said Act No. 23.

Where *lands in kind* are recovered, the compensation as aforesaid, of said McEnery, shall be represented in *scrip or certificates* to be issued by the Register of the Land Office of the State, and *locatable upon any lands owned by the State.*

Thus done and signed the day and date above written.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

(Signed) JOHN McENERY,

80 And on the same day Governor Wiltz addressed the said McEnery the following letter, to wit:

STATE OF LOUISIANA,
EXECUTIVE DEPARTMENT, *March* 20, 1880.

Hon. John McEnery, New Orleans, La.

SIR: In pursuance of Act No. 23 of the General Assembly of the State of Louisiana, approved March 8, 1880, an authentic copy

whereof is hereto annexed, I have contracted with and selected you as suitable counsel to carry into effect said law, and you are fully authorized and empowered, in the name and on behalf of the State of Louisiana, to receipt for all lands, money and scrip to be granted or paid over to this State by the United States, recoverable under said Act No. 23.

Very Respectfully,

(Signed) LOUIS A. WILTZ, *Governor.*

Second. Your petitioner shows that plaintiffs allege and pretend that the clause in said contract reading:

"Where lands in kind are recovered, the compensation as aforesaid, of said McEnery shall be represented in scrip or certificates to be issued by the Register of the Land Office of the State," and locatable upon any lands owned by the State,"

is utterly null and void.

Your petitioner shows that the first part of said clause, reading

"Where lands in kind are recovered, the compensation as aforesaid, of said McEnery shall be represented in scrip or certificates to be issued by the Register of the Land Office of the State," * * *

81 is legal and valid and was a proper and legal clause to insert for the purpose of ascertaining regularity, from time to time as work was done under the contract, what compensation had accrued to said McEnery for the work so done by him under the said contract.

Your petitioner shows that the said McEnery entered promptly upon the work required by the contract, and from time to time recovered lands, money or scrip, to which the State was entitled under the said donations by the Federal Government; and, from time to time, the said McEnery after making such recoveries, turned in to the Register of the State Land Office, a list of the lands, money or scrip so recovered by him; and on each such occasion the Register of the State Land Office issued a certificate, or several certificates, to the said McEnery, showing the amount of compensation to which the said McEnery was entitled under his said contract for his said recoveries thereunder.

Your petitioner shows that, after the issuance of such certificates, the said McEnery often sold and assigned the same to others, and that eventually the said certificates were redeemed by the State, by the patenting to the said McEnery, or his assigns, of lands of the State, and when the said patents were issued the said certificates were surrendered by the said McEnery or by the assignees.

Your petitioner shows that whenever the land given in exchange for said certificates was a part of the land actually recovered by the said McEnery, the patent therefor is indisputably valid and legal.

Your petitioner shows that the plaintiffs herein contend that where such certificates were redeemed and paid by the patenting to the said McEnery, or his assigns, of lands which the State owned prior to 1880, and which were not recoverable for the State by the said McEnery, such patents are absolute, incurable nullities, and have no legal consequence what- or effect whatsoever, and that said

lands covered by such last described patents are still to be treated as owned by the State, and as included among the lands which the State, under its general statutes, offers to sell; and, acting upon this assumption and theory, the plaintiffs herein pretend that they
82 went to the Register of the State Land Office in February and March, 1905, as stated in their petition, and then and there tendered to said Register the price of said lands as fixed by the general statutes of the State of Louisiana covering the sale of the public lands of the State; and the plaintiffs pretend that they then and there demanded to be accepted by the Register of the State Land Office as first applicants for the purchasers of said lands, and demanded the issuance to them of patents for said lands, thus wholly disregarding and collaterally attacking the legality and validity of the patents to said lands theretofore issued by the State of Louisiana, and then and now owned by petitioner herein.

Your petitioner shows that the said pretensions of the plaintiffs herein, as above set forth, are without any foundation in law, for the further following reasons, to wit:

First. Your petitioner shows, that after the issuance of the State patents described on Exhibit "B," the lands covered by said patents stood segregated from the public domain of the State of Louisiana, and were no longer offered for sale or included among the lands offered for sale under the statutes of the State of Louisiana; and as long as said entries and patents remained uncanceled of record, the effect thereof was to segregate the tracts of land covered by said entries from the lands of the public domain, and precluded the plaintiffs herein, or anyone else, from acquiring any inceptive rights to said lands by virtue of the alleged and pretended applications to enter and purchase the same, or in any other manner—the said applications being utterly ineffectual to vest any rights in the plaintiffs.

Your petitioners show that, after the issuance of said patents described in Exhibit "B," the validity and legality of said patents could be attacked only by the State of Louisiana, and that in a direct action; and neither the plaintiffs herein, nor anyone else, except the State of Louisiana, has any right or standing or interest to attack the said patents either directly or indirectly.

Second. Your petitioner further shows that, as said patents
83 have now been sold by the patentees and have passed into the domain of lands subject to private ownership, and have, after thus being included among lands subject to private ownership, been sold and mortgaged time and again, the State itself cannot now attack or in any manner impugn the validity and the legality of the said patents described on Exhibit "B."

Your petitioner shows that said patents were issued by the State of Louisiana more than twenty five years ago; that, since the time that said patents were issued, the said lands covered by said patents have been regularly assessed and taxed by the proper authorities, and the owners thereof have paid taxes thereon to the State of Louisiana and to the parishes in which said lands were situated; and all this has been done with the fullest knowledge on the part of the Gen-

eral Assembly of the State of Louisiana, and of the Governor of the Stat- of Louisiana, and of the authorities of the Land Office, of all the facts by reason of which the plaintiffs herein now pretend that the said patents should be treated as absolute and incurable nullities.

Third. Your petitioner shows that, even if the plaintiffs herein ever had any inceptive rights under its pretended entries of said land made February and March, 1905, (which is denied) still such rights were forfeited by the absolute inaction of the said plaintiffs between the time of said pretended entries and the time of filing this suit, more than one year, during which said plaintiffs made no attempt to perfect said pretended entries and withdrew the money they deposited in the land office for said entries; and petitioner denies that in any case said pretended entries or deposits were legally and validly made, even if said lands had been open for entry, which they were not.

Fourth. Your petitioner denies that the said patents described on Exhibit "B" were illegally issued or are null and void for any reason.

Your petitioner shows that, on four of said patents, it is re-
84 cited that said patents were *"located per certificate 375, Section 8, Act 75 of 1880,"* which clause affirms that said lands were paid for in cash, under the general law governing the sale of the public lands of the State of Louisiana; and your petitioner shows that, after the State of Louisiana has issued its patent, signed by the Register of the State Land Office and by the Governor of the State of Louisiana, affirming that the lands described in the patents were sold for cash, under the statute authorizing the sale thereof for cash, the State of Louisiana is estopped from questioning the validity of said patents. And your petitioner shows that the fifth of said patents contains a clause alleging that said patent was *"purchased per certificate No. —, ——."*

Your petitioner shows that there is nothing in said clause just quoted, nor in any other clause or recital of such patent, that indicates that said patent was in any manner illegal, null or void; that the forms of said patent is the usual and regular form of the patents of the State of Louisiana, and that petitioner was entitled to believe and did believe that the said patent was valid, regular and legal, and that the State of Louisiana, having issued a patent regular in all of its terms and recitals, and having permitted same to remain unassailed for more than twenty-five years, during all which time it caused said lands to be assessed and taxed, and collected and used the taxes thereon, would be estopped from directly assailing same, or attempting to annul said patent.

Your petitioner shows that the plaintiffs cannot do, either in these proceedings or in any other proceedings, that which the State of Louisiana would not be permitted to do.

And your petitioner shows that, even were the patents read, as some of them do read, "purchased per certificate No. — Act 23, 1880," such patents contain nothing illegal and nothing to indicate or give rise to the suspicion that they were illegal.

Your petitioner shows that it has been expressly declared and decided by the Supreme Court of the State of Louisiana, that the

Register of the State Land Office was charged with the City of
85 issuing scrip or certificates to the said McEnery under the said above-mentioned contract, and it has been expressly decided that the said Contract of March 20, 1880, made under said Act 23 of 1880, was authorized by said Act and is legal, valid and binding.

Petitioner shows that said decision was rendered in the suit of State *ex rel.* John McEnery *vs.* F. T. Nicholls, Governor of the State of Louisiana *et al.*, reported in 42 Annual 209; and petitioner shows that the said case was originally tried in Division "A" of the Civil District Court for the Parish of Orleans, the Honorable T. C. W. Ellis, Judge; that Judge Ellis in said case gave written reasons for his opinion, and in said written opinion said:

The Court is asked to find in this case:

First. Is the contract made with John McEnery by Governor Wiltz such a contract as was authorized by Act No. 23 of 1880?

The Court finds it is.

Second. The Court finds that there was power in the Legislature to pass said statute, and, while, providing for the recovery of State lands, had the right to fix the terms of employment, or to authorize the Governor so to fix them.

Third. The Court finds that there is power in the Register to issue certificates or warrants for the lands so described, after fixing and setting aside the lands coming to the State under the recoveries made by the relator.

Fourth. The Court finds that the land and scrip were donated to the State by several acts of Congress for divers purposes, and that they were recovered for the State through the services of John McEnery, the relator, and that he is entitled to the compensation as provided and stipulated in his contract."

Your petitioner shows that the said defendants in said suit appealed from the decision of Judge Ellis, just mentioned, to
86 the Supreme Court of Louisiana, and that the said judgment rendered by Judge Ellis was affirmed by the Supreme Court, and in the opinion rendered by the Supreme Court it said:

"In their answers (of the Governor and Register) there is no charge of illegality in relator's contract or want of due compliance on his part with all of its terms and requirements. Neither is there any charge of unconstitutionality of the law under which it is made, * * * The rights which relator seeks to enforce flow out of Act No. 23 of 1880, by the terms of which the Governor was selected as the mandatory of the Legislature to carry its will into effect. Without legislative authority, he would have been absolutely powerless to enter into any contract in the premises, with relator or with anyone else. * * * Act No. 23 of 1880 charges that officer with the duty of issuing scrip or certificates to such person as may be employed by the Governor in pursuance of its provisions, for the amount of his compensation when lands are recovered in kind."

Your petitioner shows that the said opinion of the Supreme Court was carefully considered, and that in the commencement of its opinion the Supreme Court copied both Act 23 of 1880 and the contract thereunder of March 20, 1880.

Your petitioner shows that it is, therefore *res adjudicata* binding upon the State of Louisiana, that certificates could and should be issued by the Register of the State Land Office, under said Act 23 of 1880 and contract of March 20, 1880.

Petitioner pleads *res adjudicata* as to this issue and as to the validity and legality of the said act of the said contract.

Fourth. Your petitioner further shows that the Register of the State Land Office is required by law to furnish every year to the Auditor of the State of Louisiana

"a list of all the lands which may have been entered the pre-
87 ce-ing year, and the names of the persons entering same, and the respective parishes in which they may be situated."
Revised Statutes, Sec. 2922.

And the Register of the Land Office is also required to furnish the Governor of the State of Louisiana with a report of the operations of the Land Office of the State of Louisiana for every meeting of the Legislature; and the Governor is required by law to submit to the Legislature this report of the Register of the Land Office.
Revised Statutes, Sec. 1557.

And the requirements of said laws were regularly complied with. And in this manner both the Governor and the General Assembly were kept regularly informed of all the dispositions of the lands that were made by the Register of the Land Office.

Your petitioner shows that these reports showed the quantity of land that was patented every year to the *State Agent*, as McEnery was designated under said contract; and, as a matter of fact, both the Governor of the State of Louisiana and the General Assembly of the State of Louisiana were well aware that the certificates issued to John McEnery under his contract were being paid and satisfied by the patenting to said McEnery, or to his assignees, of lands owned by the State of Louisiana prior to 1880, and not recovered by the said John McEnery.

Your petitioner shows that the fact that such knowledge existed is evidenced by the statement of the Attorney General in his answer in the suit entitled State *ex rel.* Mrs. McEnery *vs.* Lanier, Register, reported in 47 Ann. 110, Where in it is alleged that,

"In violation of one of the provisions of Act No. 23 of 1880, the said State Agent" (as John McEnery was called under his contract), and his representatives having unlawfully received, as part of the compensation stipulated by said alleged contract, 87,427.06 acres of valuable timbered lands, which were approved to the State prior to the date of said alleged contract."

88 And your petitioner shows that, notwithstanding their full knowledge of these facts, neither the Attorney General of the State of Louisiana, nor the Governor of the State of Louisiana, nor the General Assembly of the State of Louisiana, ever took steps or ever have to this day taken any steps to annul or avoid a single one of the patents issued to John McEnery or the assignees of his certificates, and paid for with lands approved to the State of Louisiana prior to the date of the contract with McEnery; that said patents have been

all along bought and sold without any intimation by the State that they were illegal, and without any proceedings on the part of the State or of its officials to have them declared illegal. And your petitioner pleads that the Stat- is now estopped, by reason of its said conduct and acquiescence, from attacking, or attempting to annul, said patents.

Fifth. Your petitioner further shows that the General Assembly of the State of Louisiana, so far from contesting the legality and validity of the patents issued to John McEnery or the assignees of his certificates, and paid for by the patenting to said McEnery, or his assignees, of lands owned by the State of Louisiana prior to the date of said contract with McEnery, has, by the clearest and most incontestable implication, admitted the validity and legality of such patents.

Your petitioner shows that on July 12, 1888, the General Assembly of the State of Louisiana passed Act No. 106 of 1888, to abrogate and terminate the said contract of March 20, 1880, with the said John McEnery, and to repeal said Act 23 of 1880; said Act 106 reading as follows:

"SECTION 1. Be it enacted, etc., That Act 23 of the regular session of the General Assembly of the year 1880, approved March 8, 1880, and entitled "An Act to authorize the Governor of the State of Louisiana to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, or to recover the value of said lands in money or scrip," *Be and the same*
89 *is hereby repealed.*

"SECTION 2. Be it further enacted, etc., *That the act or agreement* made between Louis A. Wiltz, Governor of the State, and John McEnery, made March 20, 1880, purporting to be under the authority of said Act No. 23, *is hereby abrogated and terminated.*

SECTION 3. Be it further enacted, etc., *That this Act shall not take effect until January 1, 1889.*"

Your petitioner shows that Section 3 of said Act, declaring that said act. "*shall not take effect until January 1, 1889,*" clearly implies that, *up to that date,* the contract of March 20, 1880, *should stand in full force and effect, neither abrogated nor terminated.*

Your petitioner shows that said Act 106 of 1888 was passed in consequence of the objections made by the then Attorney General to the said act and contract, and in consequence of a great deal of discussion in regard to said Act 23 of 1880, and said contract of March 20, 1880, the provisions of which were generally and widely known.

Petitioner shows that, after thus admitting the legality and the validity of the said act, and of the said contract, and providing that same should remain in full force and effect until January 1, 1889, the Legislature of the State of Louisiana has ratified and adopted the said act and contract made thereunder, and is now estopped from attacking same, or attempting to annul and avoid the patents issued thereunder.

Your petitioner shows that where patents are issued by the proper officer of the Government, in regular form and signed by the proper

officers, parties who purchase such patents are justified in relying on the regularity and legality of said patents, unless the recitals therein themselves show the patents to be illegal; that the purchasers of the patents issued by the Government are not required to make any investigation outside the patents, but may rely upon the terms and recitals of the patents themselves.

Your petitioner shows that it was not bound to make a
90 searching examination, or any examination, into the facts upon which the patents issued, nor to hunt for something to cast a suspicion upon the integrity of the title, nor for grounds of doubt.

Sixth. Your petitioner further shows that not even the State of Louisiana can now attack or attempt to annul the said patents described on Exhibit "B", nor any other patents paid for with the so-called McEnery scrip or certificates, because the said State has already sold and disposed of all the lands recovered by the said McEnery under the said Contract, and after thus disabling itself from performing and carrying out the contract with the said McEnery, in the way in which it is now pretended by the plaintiffs herein and the said contract ought to have been carried out, neither the State nor any one on behalf of the State, nor the plaintiffs herein, can attack and annul the said patents actually issued to the said McEnery.

Your petitioner shows that the settlement with the said McEnery having been made through a long series of years, by the Governor and Register of the Land Office, and other officers of the State having jurisdiction in the premises, and the facts being fully known to the General Assembly of the State of Louisiana; and the State having by the sale of the lands, actually recovered by McEnery, rendered it impossible to give the said McEnery one-half of the exact lands which he recovered, it is not now competent for the State to annul and take back the lands which it actually transferred to the said McEnery, or his assignees, and so repudiate all settlements with the said McEnery and his assignees. Your petitioner shows that to do this would deprive the said McEnery of his as-ignees including your petitioner, of their property without just compensation and due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

II.

Seventh. Your petitioner shows that the action of Frellsen & Company, the plaintiffs herein, in attacking petitioner's title, was a
91 wanton and wholly unjustifiable slander of the title of your petitioner to the said lands described in Exhibit "A", and has put your petitioner to great cost and damaged your petitioner by compelling it to employ counsel to represent it in this litigation and to incur other large expenses.

Petitioner shows that this litigation is a wholly unwarrantable and utterly unjustifiable slander of your petitioner's title to said lands, and that the plaintiffs herein ought to be made to pay your petitioner the damages which your petitioner has suffered by reason of the said action of said plaintiffs.

Petitioner shows that it has been damaged in the sum of $3,000 through plaintiffs' said unjust and unwarrantable slander of petitioner's title to the said lands, and that plaintiffs herein, Frellsen & Company should be condemned to pay to your petitioner the said sum.

III.

Your petitioner shows that in the year 1906, certain persons attempted to induce the General Assembly of the State of Louisiana to pass an act instructing the Attorney General of the State to bring suit to set aside all patents which, upon investigation of the records of the Land Office of the State, should appear to have been issued in exchange for, and to have been paid with, certificates issued to John McEnery under his said contract, where said lands had been acquired and owned by the State of Louisiana prior to the making of said contract, and had not been recovered by the said John McEnery.

Your petitioner shows that, on full consideration of the matter thus brought before the General Assembly, and in view of the fact that there were other cases in which the patents of the State of Louisiana for lands had been issued in exchange for what were by some persons regarded and asserted to be illegal and void certificates of scrip, and in view of the fact that there was great doubt as to the existence of any right on the part of the State of Louisiana to invalidate said patents, the said act was not passed by the General Assembly of the State of Louisiana, but, in lieu thereof, there
92 was passed what is known as the "Toomer Act", being Act No. 85 of the Acts of the General Assembly of the State of Lousiana for the year 1906, said act being as follows:

An Act "Declaring that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said patents, where the said patents were not paid for in money, but were paid for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees, of said patents to validate and perfect their title to the lands covered by said patents, or to any part or sub-division of such lands, within one year from the date of passage of this act, by paying therefor in cash the price of one dollar and fifty cents per acre.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That where the State of Louisiana has issued for its lands patents, signed by the Governor of the State and by the Register of the State Land Office, and purporting on their face to have been paid for by certificates or warrants of given numbers, and where certificates or warrants so referred to as having been given in payment for the patents are, in fact, certificates or warrants for scrip, which scrip, for any reason was not legally receivable in payment for such patents, in such cases, the present holders and owners of the patents, their heirs, assignees or transferees, shall be confirmed as

applicants in the State Land Office for the lands covered by such patents, or for any part or sub-division of such lands, from the date on which said patents were issued, and shall be entitled to perfect and validate their title to the lands covered by their patents, or to any part or sub-division of such lands, within one year from the date of passage of this act, by paying in cash to the State the price
93 of one dollar and fifty cents per acre; said payments shall be made in the names of the original patentees, and the Register of the State Land Office is hereby directed to issue the proper orders to the State Treasurer, who shall receipt for said payments; and, on making said payments, the said patents shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

Your petitioner shows that said act is not a special or local act, but is a general act, and is applicable in all cases where any patents of the State of Louisiana were not paid for in money, but by certificates or warrants for scrip which were not, or were alleged not to be, legally receivable in payment for such patents.

That said act does not apply *a*xclusively or specially to the said McEnery patents, and was not intended to apply exclusively to such patents; that said act is a general act and is constitutional and valid in all its provisions, especially in the provision treating the present holders and owners of said patents, as, at any rate, the first applicants for the land covered by said patents, even if the payment therefor be held to be illegal; and the plaintiffs herein are without right, interest or authority to enjoin the enforcement of said act.

And petitioner shows that the effect of this act is to enable all persons holding patents, the validity of which might possibly be attacked on the grounds on which the plaintiffs herein have collaterally attacked said patents now owned by your petitioners, to settle and buy out all claims of the State, by complying with the terms of said act.

Your petitioner shows that, while it never doubted the validity of its patents described on Exhibit "B" attached to this petition nevertheless, your petitioner deemed it expedient to at once settle and extinguish any claims, even though not founded in law or justice, that the State might assert against the validity of said patents, by complying with the terms of said act.

Your petitioner has, therefore, offered to comply with the
94 terms of said act 85 of 1906, not because your petitioner believes that its said patents are invalid, but because it is of interest and great concern to petitioner, with the least possible delay, to settle the said possible (though never expressly asserted) claims of the State, and to avert the implied threat of the State of Louisiana, that if its said offer of compromise, as contained in said act, is not accepted suit will be brought by the State to invalidate and set aside the said patents.

Your petitioner shows that, even if the patents owned by your petitioner were not validly and legally paid for by the said McEnery scrip (and petitioner does not admit that said patents were not so paid for, but avers that said patents were in fact legally and

validly paid for in money or otherwise), still, the application on which said patents issued, stood as valid and a legal and valid application, and a failure legally to pay for said patents, if such failure there was, did not cancel or annul the application, but left the application still and always standing and capable of being at any time perfected by making a legal and valid payment for the said patents; and your petitioner shows that it was competent for the Legislature of the State of Louisiana to treat the application upon which said patents issued as the first and valid application for said lands; and, assuming the payment therefor never to have been legally completed, to permit said applicants to perfect their applications, and to obtain patents under the terms of said Act 85 of 1906.

Premises considered, petitioner prays: That it have leave to file this petition of intervention herein, and that the same be duly served on the plaintiffs herein, J. W. Frellsen & Company, and upon the defendants herein, and that, after due proceedings, there be judgment rejecting the plaintiffs' demands herein, with costs; and decreeing that the said plaintiffs herein have no right, title nor standing in court to sue to annul your petitioner's said patents; further decreeing that the said patents of your petitioner, as in Ex-
95 hibit "B" hereto annexed, are legal and valid and unassailable, either by the plaintiffs herein or by the State of Louisiana; and decreeing that petitioner has a legal and valid title to said lands, covered by said patents, independent of the proceedings taken by petitioner under said Act 85 of 1906; and, in the alternative, and in case this Court should be of the opinion that the plaintiffs herein have any standing in court to litigate the questions raised the pleadings of the plaintiffs, and should also be of the opinion that the original patents described on Exhibit "B" were illegal and invalid when issued, and that plaintiffs did not acquire a good, legal and unassailable title to the lands covered by said patents through the purchase thereof, but that said patents were still void, after being acquired by petitioner; and that petitioner had no legal title to said land on said patents, then, that this Court decree *that* said Act 85 of 1906 to be constitutional and valid in all of its provisions, and that the provision treating your petitioner as the holder and owner of said patents, and the original patentees as the first applicants for said lands, is valid, legal and constitutional, and that petitioner under its offer to comply with said Act 85 of 1906, is to be deemed the first applicant and is to be entitled to patents for said lands.

Your petitioner further prays that said plaintiffs, J. W. Frellsen & Company, and the said Joseph W. Frellsen and said James D. Hill, be condemned, *in solido*, to pay to your petitioner the sum of three thousand dollars damages, as above stated.

And your petitioner further prays for all and general relief to which he may be entitled in the premises.

(Signed) HALL & MONROE,
Att'ys for Intervenors.

NEW ORLEANS, *February* 15*th*, 1907.

Service of above petition of intervention accepted.

(Signed) WALTER GUION,
Attorney General.

96 With full reservation of all legal objections and exceptions to the filing of this petition of intervention and of all legal defenses to same, service of this petition is accepted and citation is waived, all other defenses fully reserved.

New Orleans, February 15, 1907,

(Signed) MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.

Order.

Let this Petition of Intervention be filed and served as prayed for and according to law.

Thus given and granted by me officially, at Baton Rouge, Louisiana, on this 25th day of March, A. D. 1907.

(Signed) H. F. BRUNOT,
Judge 22nd Judicial District.

Filed March 25, 1907.

(Signed) T. E. McHUGH, *Clerk.*

EXHIBIT "A."

Lands in Township 12 South, Range 1 West, South West Land District of Louisiana, as follows:

(1) All of	Section	9	640.00	acres.
(2) E. ½ of S. E. ¼ and N. ½	"	19	446.63	"
(3) N. W. ¼ 28 & N. ½	"	29	480.00	"
(4) N. ½, Sec. 2 and N. ½	"	4	654.40	"

97

(5) W. ½ of S. W. ¼ of N. W. ¼ and W. ½ of N. E. ¼	Section "	19 30	390.74	acres.

EXHIBIT "B."

No. of patent.	Date.	Name of patentee.	Clause showing manner of location & payment.
(1) 4747	Sept. 27, 1882—	Francois & Jean Pierre Geuydan.....	"Located per certificate 375 Sec. 8, Act 75 of 1880, Sept. 27, 1882.
(2) 4748	Sept. 27, 1882—	Francois & Jean Pierre Gueydan.....	"Located per certificate 376 Sec. 8, Act 75 of 1880, Sept. 27, 1882.
(3) 4748	Sept. 27, 1882—	Francois & Jean Pierre Gueydan.....	"Located per certificate 377 Sec. 8, Act 75 of 1880, Sept. 27, 1882.
(4) 4909	Decr. 21, 1882—	Francois & Jean Pierre Gueydán.....	"Located per certificate 394 Sec. 8, Act 75 of 1880, Sept. 27, 1882.
(5) 3930	Novr. 8, 1880—	Emile Broussard.....	"Purchased per certificate 136, November 8, 1880."

Filed March 25th, 1907.

(Signed) T. E. McHUGH, *Clerk.*

Peremptory Exception.

The State of Louisiana, 22nd Judicial District Court, Parish of East Baton Rouge.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

98 Now into this Honorable Court, through the Attorney General, Walter Guion, come defendants, A. W. Crandell, Register of the State Land Office, and Paul Capdeville, State Auditor of Public Accounts, who peremptorily except to the action and demand of plaintiffs on the ground and for the reasons that the petition of plaintiffs discloses and sets forth no cause of action and no right of action against exceptors.

Wherefore exceptors pray that this their exception be maintained, and that the demand and action of plaintiffs be rejected and their petition dismissed with costs. And for all and general relief.

(Signed) WALTER GUION, *Attorney General.*

Filed March 25th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

Exception to Intervention of Bowman Hicks Lmbr. Co.

22nd Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into Court comes J. W. Frellsen & Co., Plaintiff herein, solely for the purpose of this exception, and pleads that this Court has no jurisdiction *ratione materiæ* or *ratione personnæ* to determine the question of plaintiff's title in these proceedings on intervention of Bowman-Hicks Lmbr. Co.

That the Court has no jurisdiction to entertain any issue raised by intervenor in this suit, other than the constitutionality *vel non* of the Acts 85 and 86 of 1906, for the reasons that plaintiff has asked no relief other than that the Acts 85 and 86 of 1906 be declared unconstitutional;

99 That the Court has no jurisdiction *ratione personnæ* to entertain an action for damages for alleged slander of title.

Wherefore, Plaintiff prays that this exception be maintained and intervenor's suit be dismissed at its costs.

(Signed) MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.

Filed April 10th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

Exception to Intervention of H. J. Lutcher et al.

22nd Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into Court comes J. W. Frellsen & Co., Plaintiff herein, solely for the purposes of this exception, and pleads that this Court has no jurisdiction *ratione materiæ* or *ratione personnæ* to determine the question of plaintiff's title in these proceedings on intervention of H. J. Lutcher *et al.*

That the Court has no jurisdiction to entertain any issue raised by intervenor in this suit, other than the constitutionality *vel non* of the Acts 85 and 86 of 1906, for the reason that plaintiff has asked no relief other than that the Acts 85 and 86 of 1906 be declared unconstitutional;

That the Court has no jurisdiction to entertain a petitory action of intervenor to be declared the owner of said lands, inasmuch as intervenor claims to be the owner and claims to be in actual possession of said lands and a petitory action could only be brought in the Parish where said lands are situated, and against the parties in actual possession.

That the Court has no jurisdiction *ratione personnæ* to entertain an action for damages for alleged slander of title.

Wherefore, Plaintiff prays that this exception be maintained and intervenor's suit be dismissed at its costs.

(Signed) MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.

Filed April 10th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

Exception to Intervention of Vermillion Developement Co.

22nd Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into Court comes J. W. Frellsen & Co., Plaintiff herein, solely for the purposes of this exception, and pleads that this Court has no jurisdiction *ratione materiæ* or *ratione personnæ* to determine the question of plaintiff's title in these proceedings on intervention of Vermillion Developement Co.

That the Court has no jurisdiction to entertain any issue raised by intervenor in this suit, other than the *un*constitutionality *vel non* of the Acts 85 and 86 of 1906, for the reason that plaintiff has asked no relief other than that the Acts 85 and 86 of 1906 be declared unconstitutional;

That the Court has no jurisdiction to entertain a petitory action of intervenor to be declared the owner of said lands, inas-
101 much as intervenor claims to be the owner and claims to be in actual possession of said lands and a petitory action could only be brought in the Parish where said lands are situated, and against the parties in actual possession;

That the Court has no jurisdiction *ratione personnæ* to entertain an action for damages for alleged slander of title.

Wherefore, Plaintiff prays that this exception be maintained and intervenor's suit be dismissed at its costs.

(Signed) MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.

Filed April 10th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

Exception to Intervention of Mrs. A. M. Gueydan et al.

22nd Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Now into Court comes J. W. Frellsen & Co., Plaintiff herein, solely for the purposes of this exception, and pleads that this Court has no jurisdiction *ratione materiæ* or *ratione personnæ* to deter-

mine the question of plaintiff's title in these proceedings on intervention of Mrs. A. M. Gueydan *et al.*

That the Court has no jurisdiction to entertain any issue raised by intervenor in this suit, other than the constitutionality *vel non* of the Acts 85 and 86 of 1906, for the reasons that plaintiff has asked no relief other than that the Acts 85 and 86 of 1906 be declared unconstitutional;

102 That the Court has no jurisdiction to entertain a petitory action of intervenor to be declared the owner of said lands, inasmuch as intervenor claims to be the owner and claims to be in actual possession of said lands and a petitory action could only be brought in the Parish where said lands are situated, and against the parties in actual possession;

That the Court has no jurisdiction *ratione personnæ* to entertain an action for damages for alleged slander of title.

Wherefore, Plaintiff prays that this exception be maintained and intervenor's suit be dismissed at its costs.

(Signed) MORGAN & MILNER,
Att'ys for J. W. Frellsen & Co.

Filed April 10th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

Supplemental Petition of Intervenor.

22nd Judicial District Court, Parish of East Baton Rouge.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

The supplemental and amended petition of intervention of the Vermillion Developement Company, Limited, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, with leave of this Honorable Court first had, Respectfully shows: That through a misapprehension of the facts there was failure to allege in its original petition that your intervenor had upon the — day of July, 1906, prior to the issuance of the injunction in this case, tendered to the proper officials

103 of the State of Louisiana the price specified under the Toomer Act for the lands described in the exhibit "A" annexed to its original petition. That the said officials, in their official capacity, received the amounts so tendered from your petitioner for the purpose recited in the Toomer Act. That, therefore, as to petitioner the injunction prayed for in plaintiff's petition is without force or effect.

Wherefore, petitioner re-avers and repeats all of the prayers of its original petition; prays that this supplemental petition of intervention may be filed, and for costs and general relief.

(Signed) HALL & MONROE,
Att'ys for Pl't'ffs.

Service accepted, and all rights of every character reserved.
(Signed) MORGAN & MILNER,
Att'ys for Pl't'ffs.
(") WALTER GUION,
Att'y Gen'l, Att'y for Def't.

It is ordered that the foregoing supplemental petition of Intervention be allowed and filed this 10th day of April, 1907.
(Signed) H. F. BRUNOT,
Judge 22nd Jud'l Dist.

Filed April 10th, 1907.
(Signed) T. E. McHUGH, *Clerk.*

104 22d Judicial Dist. Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

The plaintiffs represent that on March 28th 1905, they made formal application to the Register of the State Land Office to enter the sundry tracts of land described in their petition and on the same day made a legal tender of the price of these lands to the Register of the Land Office, State Auditor and State Treasurer. That their application and tender was refused by the Register of the Land Office because the lands applied for had been theretofore entered or patented to others; that their tender was declined by the Auditor and Treasurer because of the action of the Register of the Land Office thereon; that the lands applied for were not recovered to the State by John McEnery but belonged to the State under and by virtue of the Acts of Congress of 1848 and 1850 and by the recorded approved lists of 1849; that the lands applied for were entered with what is known as McEnery Scrip or Certificates, by assignees of John McEnery; that these certificates and the patents purchased with them both show upon their face that they were issued under Act 23 of 1880; that under Act 23 of 1880 these patents and certificates are null and void *ab initio* because the last clause of Art. 2 of the contract of March 20th 1880 which the then Governor of the State entered into with John McEnery was *ultra vires* of the Governor; that this contract did not convey to the Register of the State Land Office any authority to issue to John McEnery certificates locatable upon lands the title to which was already vested in the State; that the Governor was without authority to authorize the issuance of or to sign patents to any entryman who had located land with McEnery Scrip or certificates; that these certificates and patents did not segregate the land they purported to convey from the public domain; that plaintiffs are the first applicants for the lands described in their

petition since the issuance of the McEnery certificates and the patents purchased therewith; and, as first applicants they have
105 acquired a vested right to purchase said lands; that Acts 85 & 86 of 1906 are unconstitutional, null and void because they violate Articles 31, 32 48, 50 and 166 of the State Constitution of 1898 and Article 1 Section 10 of the Constitution of the United States; and that the Register, Auditor and Treasurer will carry out the provisions of Acts 85 & 86 of 1906, to the irreparable injury of petitioners unless they are restrained by injunction. The prayer is for citation of the three officers designated; for injunction restraining them or either of them from carrying out any of the provisions of Acts 85 & 86 of 1906 and for judgment decreeing the unconstitutionality of these Acts and perpetuating the injunction.

The defendants, for answer to this petition admit all the essential averments of the petition except the alleged unconstitutionality of Acts 85 & 86 of 1906. This averment they deny.

Bowman-Hicks Lumber Co., Lutcher *et als.;* Mrs. M. A. Gueydan *et al.;* and Vermillion Development Co. intervene. The averments of the petitions of intervention give the pleadings a wide range.

Plaintiffs except to the several interventions upon the ground that the Court is without jurisdiction to pass on the issues raised by intervenors, other than the constitutionality *vel non* of Acts 85 & 86 of 1906.

Two of the defendants, the Register of the State Land Office and the State Auditor except to plaintiffs' petition on the ground that the allegations thereof disclose no right of action and no cause of action.

The case is now before the Court on this exception.

The purpose of the plaintiffs in this suit is to have Acts 85 & 86 of 1906 declared to be unconstitutional and to have the Register of the State Land Office, the State Auditor and the State Treasurer perpetually enjoined from carrying out any of the provisions of either of those acts. Plaintiffs' rights in the premises are based solely upon their application and tender to enter and purchase made on March 28th, 1905. The only question, therefore, before the Court at this time is: Did plaintiffs' application and tender create in their favor any vested interest in or any inceptive or inchoate right to purchase the lands applied for?

106 In the case of "Gill Smith & Oliver Wallace *vs.* A. W. Crandell *et als.*" recently decided by the Supreme Court of this State; the plaintiffs sought to annul patents issued in 1881 to lands located with McEnery scrip. The defendants excepted to the petition upon the same grounds now urged by the defendants in this case. The exception was sustained and on appeal, the judgment was affirmed. Mr. Justice Land was the organ of the Court and the opinion, quoted in full, is as follows, viz:

"The petition herein represented that on or about May 4th, 1906, the plaintiffs made a formal application to the Register of the State Land Office and tendered the legal price, fees, commissions, etc., for the entry of sundry tracts of land, aggregating 10,896.24 acres; that said application was rejected for the reasons that said

lands had been entered or purported to have been entered; that said entries were null and void *ab initio* because made under Act 23 of 1880 with what is known as McEnery 'Land scrip' which was located upon the lands of the State of Louisiana belonging to said State at the time of the issuance of said land scrip, and the Register was without authority, and the Governor at that time, namely, 1881, was without authority to sign patents or to have the same issued to any entryman who had located with said land scrip; that the lands described were not entered by John McEnery with the scrip described; were not entered by John McEnery with the scrip issued to him, but were entered by other parties who had possibly purchased the scrip from him; that the said lands have been transferred to various parties defendants, none of whom have ever taken or had any actual possession of the said lands; that said entries are totally null and void and the land should revert to the State of Louisiana, and that petitioners being the first legal applicants, should have a preference right to enter said lands when so reverted, by paying therefor the price fixed by the laws of the State, etc.

The plaintiff prayed for citation to the numerous defendants and that the entries of the lands above described made at various
107 times in the year 1881, be set aside, that the patents be revoked and that the land be declared to belong to the State of Louisiana and further that there be judgment decreeing that your petitioners, having made the first application for said land, be allowed to enter the same in accordance with their application legally made, and that the Register of the Land Office be required to accept said application and the State Treasurer be required to receive the money tendered for the purchase thereof.

The defendants excepted to the petition on the ground that the allegations thereof disclosed no right of action and no cause of action. This exception was sustained and plaintiffs have appealed from the judgment.

The petition discloses that the plaintiffs are seeking to annul entries and patents issued in the year 1881, on the sole ground that what is known as the McEnery Land Scrip, was illegally located on the lands described in the petition and that the plaintiffs' right to raise such and to recover judgment is based on their application to enter made in May 1906.

In the case of *In Re* Emblem, Petitioner, 161 U. S. 56, the Court held that even if an Act of Congress authorizing the issu- of a patent was unconstitutional, the patent conveys the legal title to the patentee, and cannot be revoked or set aside except upon judicial proceedings instituted in behalf of the United States. In that case there was a contest as to the right of pre-emption of public land, and one of the claimants contended that the Act of Congress was void, and that the patents therefore, should be disregarded as a nullity. This case was re-affirmed in Emblem *vs.* Lincoln Land Company, 184 U. S. 664; and both decisions announced the well settled rule that the jurisdiction of the land department ceased with the issue of the patent.

In the case at bar the plaintiffs had no equity in the lands in ques-

tion when the patents issued in 1881, and acquired no interest therein by their application of May 1906, to the Register of the State Land Office who was without jurisdiction in the premises because
108 the land had been segregated from the public domain.

The question of the validity of land patents is one between the State and the patentees or their assigns. Plaintiffs had no inchoate rights of any kind in or to the lands granted at the date of the issuance of the patents. Plaintiffs, therefore, have no standing to question the validity of the patents on the ground of alleged improper or illegal location of the scrip, issued to John McEnery. It seems to be conclusively settled that an entry of public land, valid upon its face, segregates the tract of land from the mass of public domain and precludes the acquisition of inceptive *right* rights thereto, as long as the original entry remains uncanceled. In such a case the second entryman does not acquire any right in the land or preference to entry though the first entry may be relinquished or ascertained to be invalid by reason of facts *dehors* the record of entry. McMichael *vs.* Murphy, 197, U. S. 304, *A fortiorari the* issuance of a patent, valid on its face, precludes the acquisition of inchoate rights to the same land by a subsequent entry or offer to enter.

In this connection it may be noted that the Legislature by Act 85 of 1906 has granted to all owners and assignees of patents which were paid for by certificates or warrants for scrip not legally receivable for such purpose, the right to perfect and validate their title on certain terms and conditions. The State has thus recogniz- that the present holders of such patents have an equity which entitles them to special consideration.

We do not consider it necessary to pass upon the question of the validity of patents granted upon warrants known as McEnery Scrip located upon lands owned by the State not actually recovered by John McEnery under his contract. Suffice it to say that plaintiffs are without standing to maintain an action to annul such patents. Judgment affirmed."

It seems from the opinion quoted, that Smith and Wallace attacked the validity of McEnery scrip and certificates and the purchase of patents therewith upon the theory that entries locations and patents made with McEnery scrip or certificates did not
109 segregate the land thus entered or patented from the public domain and, therefore, plaintiffs acquired a vested interest or inceptive right to purchase those lands by reason of their application and tender of May 4th, 1906; and, *Quoad* that interest, the right to sue and recover judgment. Except as to the phraseology, those pleadings are duplicated in this suit and are made the basis of plaintiffs attack upon Acts 85 & 86 of 1906 and of their prayer for injunction.

In the case at bar, plaintiffs had no equity in the lands described in their petition when the alleged illegal certificates and patents were issued; and, in the light of the decision quoted they acquired no interest in those lands and no right to purchase them by their application and tender of March 28th, 1905. Being without inter-

est and having no right or privilege that will be violated or impaired by the execution of the alleged unconstitutional acts, they have no standing in court to defeat the policy of the State towards the holders of equities in lands entered or patented with McEnery certificates.

The Court has carefully considered all of the authorities cited by counsel, but, in view of the recent decision of our Supreme Court herein quoted, it is unnecessary to review them further than to say that in "Pennoyer *vs.* McConnaughly" 140 U. S. 1, upon which plaintiffs rely, the Court finds that the point actually decided in that case was: whether a suit brought against certain officers of the State of Oregon was a suit against the State. For these reasons the exception of no cause of action is maintained and the writ of injunction issued herein is recalled. Plaintiffs to pay cost.

(Signed) H. F. BRUNOT,
Judge 22nd Jud'l Dist.

Filed June 10th, 1907.

[Seal of the Clerk of the Parish of East Baton Rouge.]

T. E. M'HUGH, *Clerk.*

110 *Judgment.*

22nd Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

No. 1093.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL, Register, *et al.*

Judgment.

The exception of no cause of action filed by defendants in this case was taken up pursuant to assignment, and after hearing the pleadings and argument of counsel, was taken under advisement by the Court, and it appearing to the Court that the said exception is well founded, for the reasons assigned and filed in the record:

It is ordered, that the said exception be maintained; that the writ of injunction herein be dissolved and this suit dismissed at plaintiffs' costs.

Thus done, read and signed in open Court, this 14th day of June, A. D. 1907.

(Signed) H. F. BRUNOT,
Judge 22nd Judicial District.

Filed June 14th, 1907.

(Signed) H. L. SHEPPERS, *D'y Clerk.*

Motion for Appeal.

22nd Judicial District Court, Parish of East Baton Rouge.

No. 1093.

J. W. FRELLSEN & COMPANY
vs.
A. W. CRANDELL ET AL.

111 On motion of Morgan & Milner, Attorneys for J. W. Frellsen & Co., plaintiff herein;

And on suggesting to the Court that there is error to its prejudice in the judgment herein rendered against it on June 10th, 1907, and signed on June 14th, 1907, and that it is aggrieved thereby and desires to appeal suspensively and devolutively therefrom to the Honorable the Supreme Court of this State,

It is ordered, that J. W. Frellsen & Company be allowed a suspensive and devolutive appeal herein returnable to the Honorable the Supreme Court of Louisiana within sixty days upon mover's furnishing bond with good and solvent security, according to law, which bond is fixed at Five Hundred Dollars for the suspensive appeal and the sum of Two Hundred Dollars for the devolutive appeal.

Thus done and signed in open Court this 15th day of June, 1907.

(Signed) H. F. BRUNOT,
Judge 22nd Jud'l Dist.

Filed June 15th, 1907.
(Signed) H. L. SHEPPERS, *D'y Clerk.*

Bond of Appeal.

Know all men by these presents, That we, J. W. Frellsen & Company, as principal, of New Orleans, Louisiana, and the Fidelity & Deposit Company of Maryland as surety, doing business in the State of Louisiana, are held and firmly bound unto T. E. McHugh, Clerk of the Twenty Second Judicial District Court for the Parish of East Baton Rouge, his successors, executors, administrators, and assigns, in the sum of Two Hundred ($200.00) Dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seal
112 and dated this 18th day of June in the year of Our Lord one thousand nine hundred and seven.

Whereas, the above bounden J. W. Frellsen & Company has filed on the 15th day of June, 1907, a motion of appeal suspensive and devolutive from a final judgment rendered against it in the suit of J. W. Frellsen & Company, No. 1093 of the said Twenty Second Judicial District Court for the Parish of East Baton Rouge on the 10th day of June, 1907, and signed on the 14th day of June, 1907.

Now the condition of the above obligation is such, That the above

bound J. W. Frellsen & Company shall prosecute its said appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise, that the said Fidelity & Deposit Company of Maryland shall be liable in its place.

(Signed) J. W FRELLSEN & CO.,
Per H. G. MORGAN, *Att'y.*
(") FIDELITY & DEPOSIT CO. OF MD.,
(") By P. M. MILNER, *Local Director.*

Attest:
(") CHAS. H. BLACK, *General Agent.*

Filed June 19th, 1907.
(Signed) H. L. SHEPPERS, *D'y Clerk.*

Bond of Appeal.

Know all men by these presents, That we, J. W. Frellsen & Company, as principal, of New Orleans, Louisiana, and the Fidelity & Deposit Company of Maryland, as surety, doing business in the State of Louisiana, are held and firmly bound unto T. E. McHugh, Clerk of the Twenty Second Judicial District Court for the Parish of East Baton Rouge his successors, executors, administrators, and assigns, in the sum of Five Hundred ($500.00) Dollars, for
113 the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents, sealed with our seal, and dated this 18th day of June in the year of our Lord one thousand nine hundred and seven.

Whereas, the above bounden J. W. Frellsen & Company has filed on the 15th day of June, 1907, a motion of appeal suspensive and devolutive from a final judgment rendered against it in the suit of J. W. Frellsen & Company, No. 1093 of the said Twenty Second Judicial District Court for the Parish of East Baton Rouge on the 10th day of June, 1907, and signed on the 14th day of June, 1907.

Now the condition of the above obligation is such, That the above bound- J. W. Frellsen & Company shall prosecute its said appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said Fidelity and Deposit Company of Maryland shall be liable in its place.

(Signed) J. W. FRELLSEN & CO.,
Per H. G. MORGAN, *Att'y,*
(") FIDELITY & DEPOSIT CO. OF MD.,
(") By P. M. MILNER, *Local Director.*

Attest:
(") CHAS. H. BLACK, *General Agent.*

Filed June 19th, 1907.
(Signed) H. L. SHEPPERS, *D'y Clerk.*

Minutes of Court.

TUESDAY, *February 5th*, 1907.

Court was duly opened.

Present: His Honor, H. F. Brunot, Judge elect vice Hon. Geo. K. Favrot, resigned.

By order of the Judge his commission and oath of office was spread on the minutes, as follows:

114 MONDAY, *March 25th*, 1907.

Court met pursuant to adjournment.

1093.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et als.*

In this case defendants, A. W. Crandell, Register and Paul Capdeville, Auditor, by Counsel, Attorney General Walter Guion, come into Court and leave had filed Peremptory Exception, which was assigned for the 10th of April next.

WEDNESDAY, *April 10th*, 1907.

1093.

Court met pursuant to adjournment.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*; BOWMAN-HICKS LUMBER CO., H. J. LUTCHER, ET ALS., MRS. A. M. GUEYDAN, ET ALS., VERMILLION DEVELOPMENT CO., Intervenors.

The Peremptory Exception filed herein, on March 25th, 1907, on the part of defendants, A. W. Crandell, Register of the State Land Office, and Paul Capdeville, Auditor of Public Accounts, was taken up according to assignment, and after argument of counsel was submitted to the Court. Same was taken under advisement. Ten days being allowed counsel in which to file briefs.

WEDNESDAY, *April 10th*, 1907.

1093.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et als.*

In this case leave of Court had, plaintiff by counsel filed Exception to Intervention of Bowman-Hicks Lumber Co.—Exception to
115 Intervention of H. J. Lutcher *et al.*—Exception to Intervention of Mrs. A. M. Gueydan *et al.* and Exception to Intervention of Vermillion Development Co.

MONDAY, *June 10th*, 1907.

Court met pursuant to adjournment.

1093.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*

For the written reasons filed herein judgment was rendered maintaining the Peremptory Exception filed March 25th, 1907.

FRIDAY, *June 14th*, 1907.

Court met pursuant to adjournment.

1093.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*

Judgment.

The exception of no cause of action filed by defendants in this case was taken up pursuant to assignment, and after hearing the pleadings and argument of counsel, was taken under advisement by the Court, and it appearing to the Court that the said exception is well founded, and for the reasons assigned and filed in the record;

It is ordered, that the said exception be maintained; that the writ of injunction herein be dissolved and this suit dismissed at plaintiffs costs.

SATURDAY, *June 15th*, 1907.

Court met pursuant to adjournment.

116 1093.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL ET AL.

On motion of Morgan & Milner, attorneys for J. W. Frellsen & Co. plaintiff- herein; and on suggesting to the Court that there is error to its prejudice in the judgment herein rendered against it on June 10th, 1907, and signed on June 14th, 1907, and that it is aggrieved thereby and desires to appeal suspensively and devolutively therefrom to the Honorable the Supreme Court of this State, It is ordered, that J. W. Frellsen & Company be allowed a suspensive and devolutive appeal herein returnable to the Honorable the Supreme Court of Louisiana within sixty days upon mover's furnishing bond with good and solvent security, according to law, which bond is fixed at Five Hundred Dollars for the Suspensive Appeal and the sum of Two Hundred Dollars for the devolutive appeal.

Certificate.

22nd Judicial District Court.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

CLERK'S OFFICE.

I, Thomas E. McHugh, Clerk of the aforesaid Court, do hereby certify that the foregoing — pages contain a true, correct and complete transcript of the record and of all proceedings had and documents filed in the case wherein J. W. Frellsen & Company is Plaintiff and A. W. Crandell, Register, J. M. Smith, Treasurer and Paul Capdeville, Auditor, are defendants, and now in the records thereof under the number 1093 of the docket of said Twenty Second Judicial District Court.

In testimony whereof I have hereunto set my hand and affixed the impression of the seal of said Court at the City of Baton Rouge, said State and Parish, this 6th day of August, in the year of Our Lord One Thousand Nine Hundred and Seven.

T. E. McHUGH, *Clerk.*

117 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Motion and Order to Fix with Preference.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *November* 20, 1907.

The Court was duly opened; pursuant to adjournment.

Present their Honors: Joseph A. Breaux Chief Justice, Francis T. Nicholls, Frank O. Monroe, Oliver O. Provosty, Associate Justices. Absent: Alfred D. Land, Associate Justice.

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILION DEVELOPMENT COMPANY, MRS. A. M. GUEYDAN ET AL., Intervenors.

On motion of Walter Guion Esq., Attorney General of the State of Louisiana, herein appearing on behalf of the defendant and appellee, and upon suggesting to the Court that this is a case which by law is entitled to be heard with preference; It is ordered by the Court that said case be advanced upon the trial docket and assigned for hearing with preference.

Called, Argued and Continued to December 18.

(Extract from Minutes.)

NEW ORLEANS, *Tuesday, December* 17*th*, 1907.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicolls, Frank A. Monroe, Oliver O. Provosty and Alfred D. Land, Associate Justices.

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN HICKS LUMBER COMPANY, H. J. LUTCHER, ET AL, VERMILION DEVELOPMENT COMPANY, Mrs. A. M. GUEYDAN, ET AL., Intervenors.

This cause came on this day to be heard and was argued by Mr. Purnell Mitchell Milner, on behalf of the plaintiffs and ap-
118 pellants, until 3.33 o'clock, P. M., when the Court ordered said cause to be continued until to-morrow morning at 11 o'clock for resumption of argument.

Cause Submitted.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *December* 18*th*, 1907.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land Associate Justices.

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILION DEVELOPMENT COMPANY, Mrs. A. M. GUEYDAN ET AL., Intervenors.

This cause continued from Tuesday, the 17th day of December instant, came on this day further to be heard and was argued by counsel: Mr. Purnell Mitchell Milner, for the plaintiffs and appellants; Mr. Walter Guion, Attorney General of the State of Louisiana, herein appearing for the defendant and appellee; Mr. Arsene Paulin Pujo for H. J. Lutcher, *et al.*, Intervenors and appellees; Mr. Jules Blanc Monroe for the defendants and appellees. The Court then took said cause under advisement upon the briefs for the respective parties in interest and the papers now on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, *January 9th*, 1908.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty and Alfred D. Land, Associate Justices.

His Honor, Mr. Justice Land, pronounced the opinion and
119 judgment of the Court in the following case:

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILION DEVELOPMENT COMPANY, MRS. A. M. GUEYDAN ET AL., Intervenors.

Appeal from the 22nd Judicial District Court for the Parish of East Baton Rouge.

For the reasons assigned, the judgment below is affirmed; costs of appeal to be paid by the plaintiffs and appellants.

Opinion of the Court.

120 (LAND, J.) THURSDAY, *January 9th*, 1908.

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN-HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILION DEVELOPMENT COMPANY, MRS. A. M. GUEYDAN ET AL., Intervenors.

Appeal from the 22nd Judicial District Court, Parish of East Baton Rouge.

This is an injunction suit to restrain and prohibit the Register of the State Land Office, the State Auditor and the State Treasurer from executing the provisions of Acts 85 and 86 of 1906, confirming as applicants for the entry of many thousands of acres of public land, the present holders and owners of patents and certificates of entry *issued for scrip not legally receivable in payment of the price of public lands*, on the ground that said acts are unconstitutional, because they impair the vested contract right acquired by the plain-

tiffs in 1905 to enter the same lands under Act 125 of 1902. The suit was dismissed on an exception of no cause of action, and the plaintiffs have appealed.

The facts alleged in the petition, omitting all mere inferences and conclusions of law, are in substance as follows:

The lands described in the petition were acquired by the State of Louisiana under the swamp land grants of 1849 and 1850.

In the year 1880, the Legislature passed Act No. 23, authorizing the Governor to institute proceedings and to employ counsel to recover for the State lands donated by the several acts of Congress for divers purposes, and the value of such lands in money or
121 government scrip which might have been illegally disposed of by the United States. The Act provided "that the State shall incur no cost or expense in the prosecution of said claims other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered."

In March 1880, the Governor of the State entered into a contract with John McEnery, an attorney at law, to recover the lands, money and scrip referred to in Act 23 of 1880, and agreed to pay him for his services "fifty per centum of the land, money or scrip recovered to be paid as provided in said Act 23." It was further stipulated that "where lands in kind are recovered, the compensation, as aforesaid, of the said John McEnery shall be represented in scrip or certificates, to be issued by the Register of Land Office of the State locatable upon any lands owned by the State."

The Legislature by Act 106 of 1888 repealed Act 23 of 1880 and abrogated the said contract between the Governor and John McEnery, to take effect on January 1st, 1889.

John McEnery prior to January 1st, 1889, had recovered for the State many thousand acres of land, for which scrip or certificates locatable upon any lands owned by the State was issued to him. These certificates were sold and assigned by John McEnery, and some of his assignees located their certificates on the lands described in the petition "which have not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, for which patents were thereafter . . . issued." The other assignees, (to quote the language of the petition) "stood upon their certificates." It was argued at the bar that some of the lands described in the petition were not covered by patents but by certificates of entry. We have already quoted the allegation that patents issued for such lands. This fact appears also from the following allegations of the petition, to-wit: "Petitioners aver that in every case, the lands herein described were entered with illegal McEnery scrip or certificates, heretofore set out, and the Patents that were issued therefor refer upon their face to Act No. 23 of 1880 or to the certificate number, which certificate showed upon its face it was issued under Act 23 of 1880." The
122 word "certificate" is used throughout the petition as synonomous with "scrip" and we cannot understand how a mere warrant locatable on any public land can be considered as the equivalent of a certificate of entry or receiver's receipt showing that the

applicant has paid for a particular tract of land and is entitled to a patent therefor. Hence this case must be considered and determained on the assumption that patents issued to the assignees of John McEnery for all the lands described in the petition.

In March, 1905, plaintiff made application for the entry of all the lands described in their petition under the provisions of Act 125 of 1902, and made a legal tender of the statutory price to the proper officials. This application was refused by the Register for the reason that said lands had been previously entered and patented. Plaintiffs took no legal proceedings against the Register to compel him to accept the price and to issue the proper certificate of entry.

In the year 1906, the Legislature passed Acts 85 and 86, the former referring to patents and the latter to certificates of entry, paid for in certificates or warrants for scrip, "which were not legally receivable in payment" for the price of public lands. In both cases, the Legislature provided for the conformation of such patents and certificates of entry to the present holders and owners thereof, on payment in cash of the price of $1.50 per acre, within one year from the date of the passage of said acts.

The present suit was filed on July 12, 1906, a few days after the passage of Acts 85 and 86 of 1906. The sole defendants are the Register of the State Land Office, the State Auditor and the State Treasurer. The relief prayed for is a decree perpetually injoining the defendants from executing the provisions of Act- 85 and 86 of 1906 and declaring the said Acts to be unconstitutional, null and void.

The first question to be considered and determined is whether the plaintiffs by their application and tender to the Register in 1905, acquired any contract or vested right in the lands in question. They could have done so only on the theory that the patents previously issued to the assignees of John McEnery were absolutely null and void, and could be treated as non existent by the Register of the State Land Office. This is the theory on which this suit was
123 instituted. The patents are alleged to be null and void, not because they were not in due form, but for the reason that they refer to Act 23 of 1880 or to certificates, which showed illegality on their face. Boiled down the alleged absolute nullity is that the Register received in payment of the price of the lands in question McEnery scrip "locatable on any public land," which scrip was issued contrary to the proviso of Act 23 of 1880. Conceding that such scrip was illegal, nevertheless the State received some consideration for the patents, because the scrip so locatable operated as a relinquishment by John McEnery of his interest in the same number of acres of land recovered by him under his contract. The State for more than a quarter of a century acquiesced in the issuing of patents based on McEnery scrip, and took no adverse action until 1906, long after the lands represented by the patents had passed into the hands of third persons.

In State *ex rel.* John McEnery *vs.* Governor, 42 La. Ann. 209, it was held to be the duty of the Register to issue patents to the relator for his interest in all lands, warrants or scrip, recovered by him.

While the question of the legality of the stipulation in the contract as to the issuing of scrip "locatable on any public land" was not involved or discussed in that case, the duty of the Register to issue scrip under Act 23 of 1880 when lands were recovered in kind was announced. *Ib.* 222. Hence, the fact that the patents in question refer to Act 23 of 1880 or to certificates issuable under the same, do not affect their validity. The alleged nullity is *de hors* the patents, and affects only the consideration received by the State when she parted with the title. If such scrip had been located on lands recovered by John McEnery the transaction would have been perfectly legal. Its improper location on public lands not so recovered was a matter discoverable only by inquiry and investigation.

A patent under the great seal of the State vests the legal title in the patentee, segregates the land from the public domain, and deprives the land department of jurisdiction. Hence, a subsequent application to enter the same land confers no inceptive rights on the applicant. A patent cannot be revoked or set aside except
124 upon judicial proceedings instituted on behalf of the sovereign. See *In re* Emblem, 161 U. S. 52, Emblem *vs.* Lincoln Land Co., 184 U. S. 660; Smith *vs.* Crandall, 118 La. 1052; U. S. *vs.* Thockmorton, 98 U. S. 70.

This doctrine is applicable even to a case of a patent issued under an unconstitutional Act of Congress. *In re* Emblem, 161 U. S. 56. In United States *vs.* Stone 2 Wall. 535, the court said: "A patent is the highest evidence of title, and is conclusive against the Government, and all claiming under junior patents or titles until it is set aside or annullel by some judicial tribunal. . . .

Patents are sometimes issued unadvisedly or by mistake, when the officer has no authority in law to grant them, or where another party has a higher equity and should have received the patent. In such cases courts of law will pronounce them void. The patent is but evidence of a grant, and the officer who issues it acts ministerially and not judicially. If he issues a patent for land reserved from sale by law, such patent is void for want of authority. But one officer of the land office is not competent to cancel or annul the acts of his predecessor. That is a judicial act, and requres the judgment of a court." See, also, Maxwell Land Grant Case, 121 U. S. 380.

It follows that the plaintiffs by their applications and tender to the Register acquired no inceptive rights in the lands already patented, and hence had no contract or vested rights to be impaired by the legislation of 1906. Plaintiffs rely on Pennoyer *vs.* McConnoughy, 140 U. S. 1. That case has no application, as the right of Pennoyer to make his entry was conceded, and the only question was whether such entry had been so far perfected as to confer a vested right which could not be impaired by subsequent state legislation.

As plaintiffs made no application to enter any other lands than those previously patented, the question of lands merely covered by certificates of entry is not before the court. As to McEnery scrip "locatable on any public land," Acts 85 and 86 of 1906, did not validate the same, but on the contrary repudiated all payments for patents or certificates of entry made with illegal scrip.

For the reasons assigned the judgment below is affirmed;
125 costs of appeal to be paid by the plaintiffs and appellants.

Petition for Rehearing.

Supreme Court.

No. 16771.

J. W. FRELLSEN & Co.
vs.
A. W. CRANDELL ET AL.

The petition of J. W. Frellsen & Co. with respect asks a rehearing of this cause for the following reasons, to-wit:

1. Because the Court finds that Act 23 of 1880 authorized the Register to issue Scrip for that portion of the land recovered by John McEnery—a serious mistake, against which appellant directed the attention of the Court in two briefs on file.

2. Because the Court holds that in State *ex rel.* John McEnery *vs.* Nicholls, 42 Ann. 209, "the duty of the Register to issue Scrip under Act 23 of 1880 when lands were recovered in kind was announced."

3. Because, while the Supreme Court did announce this as a duty of the Register, it was evident in that case that a gross error had been committed by reading into Act 23 of 1880 the flagrantly illegal clause of the McEnery contract which error should have been corrected not followed by this Court.

4. Because the Court will not hesitate to correct a false premise—a misstatement of fact,—a serious error and injustice that deprives a litigant of his rights.

5. Because this error goes to the root of this case, for if Act 23 of 1880 did make it the duty of the Register to issue Scrip to represent the part of lands recovered by John McEnery, manifestly the reference to said *Certificates* and to said *Act 23 of 1880* on the face of the Patents—made them valid—not invalid.

6. Because the Court is in error when it says that the petition only makes claim to lands that have been patented, or stated
126 another way, that the *petition avers that Patents issued for all the lands described.*

7. Because such a finding misconstrues the pla-n averments of the petition.

8. Because as the Court holds that the McEnery Certificates were absolutely null and void it must be apparent and follow that an *entry* made with such Certificates was necessarily null and void and hence the Patents that issued therefor were issued without *authority of law* and were null and void.

9. Because the Court ignores Act 75 of 1880, which was the only Act in existence at date of alleged entries, and the Court should not ignore the law—under which alone valid and legal entries could be made.

10. Because the averment in the petition that all the lands described were "entered or located" with these null and void Certificates is an averment, read with Act 75 of 1880, Secs. 4 and 5, that the "*entries*" themselves were null and void.

11. Because when the Court finds that the McEnery Certificates are absolutely null and void,—necessarily for those lands described in the petition (because the petition alleges that *all lands described* were *entered* with McEnery Certificates)—the petition discloses a cause of action:

12. Because the following language of the Court is not sustained by the allegations of the petition, viz:

"As Plaintiffs made no application to enter any other lands than those previously patented, the question of lands merely covered by Certificates of Entry is not before the Court," because

1. The petition avers that *all the lands described* were "entered" with McEnery Certificates—hence this is an averment of illegal *entry* of all the lands (the Certificate of Entry being merely the *evidence* not the *fact*).

2. This appears from the following allegations of the petition:

127 (*a*) That the Register *issued a large number of certificates,* the issuance of which was provided for only by said illegal clause in said Contract, and *"that these certificates were sold and assigned by said John McEnery, whose assignees located them upon the public lands hereinafter described"* (meaning that all the assignees of McEnery located all these certificates upon the public lands hereinafter described)—for which Patents were thereafter illegally and fraudulently *issued to some of said assignees* (which precludes the idea that Patents were issued to *all of said* assignees), while others *"stood upon their Certificates"* (meaning that *these others did not get Patents*).

(*b*) "Petitioners aver *that in every case the land herein* described *were entered with illegal McEnery Scrip or* Certificates heretofore set out" (meaning that *all the lands described in* the *petition* were entered with McEnery Certificates) and *the Patents* that were issued therefor (meaning that where patents issued, those patents) referred upon their face, etc."

(*c*) That the petition throughout avers that *all of the lands described were located or entered with McEnery Certificates.*

14. Because the language used in the opinion would even preclude the State of Louisiana from annulling these Patents—which certainly was not intended.

15. Because this suit indirectly involves the question of titles to 82,000 acres of land, and in the short time allowed for oral argument, it was impossible for the Court to have presented to it the facts and the law so clearly as to avoid falling into error, and no injury be done by further oral argument.

Wherefore, petitioner prays that the Court consider the briefs on file and the brief in support of this application for rehearing.

Respectfully submitted.

(Signed) MORGAN & MILLER,
Att'ys — J. W. Frellsen & Co.

128 (Endorsed:) No. 16,771. Supreme Court of Louisiana. J. W. Frellsen & Co. *vs.* A. W. Crandell *et al.* Petition for Rehearing on behalf of J. W. Frellsen & Co. Filed Jan'y 21, 1908. (Signed) Paul E. Mortimer, Dep. Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *February* 13, 1908.

The Court was duly opened, pursuant to adjournment. Present: their Honors: Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justice. Absent: Francis T. Nicholls, Associate Justice.

By the Court:

No. 16771.

F. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN-HICKS LUMBER COMPANY, H. J. LUTCHER ET AL., VERMILION DEVELOPMENT COMPANY, Mrs. A. M. GUEYDAN ET AL., Intervenors.

It is ordered that the rehearing applied for in this case be refused, for the reasons assigned in the opinion of the Court, this day handed down.

Opinion on Application for Rehearing.

129 MONDAY, *February 3rd*, 1908.

No. 16771.

J. W. FRELLSEN & Co.

vs.

A. W. CRANDELL, Register, *et al.*, BOWMAN-HICKS LUMBER Co., H. J. LUTCHER ET AL., VERMILION DEVELOPMENT Co., Mrs. A. M. GUEYDAN ET AL., Intervenors.

On Application for Rehearing.

By the COURT: Our application has been called to the following statement in the case of the State *ex rel.* John McEnery *vs.* Francis T. Nicholls, Governor, *et al.*, 42 La. Ann. 222 to-wit: "Act 23 of 1880 charges that officer (the Register) with the duty of issuing scrip or certificates, to such person as may be employed by the Governor in pursuance of its provisions, for the amount of his compensation when lands are recovered in kind." It may be freely conceded that Act 23 of 1880 does not in terms authorize the issue of scrip or certificates; but it did empower the Governor to make an allowance "out of the lands, money or scrip" that might be recovered. The Governor pursuant to the provision of the Act made a contract with John McEnery, the last paragraph of which reads as follows: "Where lands in kind are recovered, the compensation,

aforesaid, of the said John McEnery shall be represented in scrip or certificates to be issued by the Register of the Land Office of the State, and locatable upon any lands owned by the State." In the case cited, the Court was dealing with lands *actually recovered* by John McEnery under his contract with the Governor, and found no difficulty in arriving at the conclusion that John McEnery under the very letter of his contract was entitled to one half of the lands *so recovered,* and that it was the mandatory duty of the Register and Governor to issue patents to John McEnery for the lands which had been allotted to him by the Register. In our opinion we referred to the case cited for the purpose of showing that under the contract made pursuant to Act 23 of 1880, scrip and patents might have lawfully issued to John McEnery for his interest in lands
130 *actually recovered* by him for the State of Louisiana. Our conclusion was that the mere reference in patents to Act 23 of 1880 did not show that the same had been issued in violation of law. But the gist of our decision is that patents having issued, the lands were thereby segregated from the public domain, and were no longer subject to entry. There is no authority or precedent that would warrant this court to decree such patents to be null and void in a collateral proceeding to which the present holders of the patents are not parties. Our understanding of the law is that only the State can sue to cancel or annul such patents, issued at a time when no third persons had any inceptive right, legal or equitable, in the lands conveyed by such instruments.

Petition for Writ of Error.

Supreme Court of Louisiana.

No. 16771.

J. W. FRELLSEN & Co. (Composed of Joseph W. Frellsen and James D. Hill),

vs.

A. W. CRANDELL, Register of the State Land Office; JAMES M. SMITH, State Treasurer, and PAUL CAPDEVILLE, State Auditor, Defendants; BOWMAN-HICKS LUMBER COMPANY, VERMILLION DEVELOPMENT COMPANY, H. J. LUTCHER, W. H. STARK, JOHN DIBERT, E. W. BROWN and F. H. FARWELL, HENRY L. GUEYDAN, Mrs. AMELLIA GUEYDAN, Wife of Alfred Amar; and ALFRED AMAR; Mrs. MARGUERITE GUEYDAN, Wife of Louis Rauzier, and LOUIS RAUZIER, Mrs. CECILE GUEYDAN, Wife of C. E. J. Fatou, and C. E. J. FATOU; Mrs. AMELIE MONTAGNE GUEYDAN, Widow of Jean Pierre Gueydan, Intervenors.

To the Honorable the Chief Justice of the Supreme Court of the State of Louisiana, or to the Honorable the Chief Justice, or any Associate Justice of the Supreme Court of the United States:

The petition of J. W. Frellsen & Company, a partnership
131 composed of Joseph W. Frellsen and James D. Hill, both residents of the City of New Orleans, State of Louisiana, with respect represents:

That on March 28, 1905, availing themselves of the provisions of Act 125 of 1902, amending and reënacting Section 10 of Act 75, approved 1880 as amended and reënacted by Act 195 of 1898, made application, in strict accordance with said statute to enter many thousand acres of land and made legal tenders of the purchase price of such lands, to-wit, $1.50 an acre, as stipulated in the aforesaid Act, which tenders were made according to law to the Register of the Land Office, the State Auditor and State Treasurer, who declined to receive the money.

That Act 125 of 1902, relative to the sale of Public Lands, was a standing invitation by the State of Louisiana for the sale of its Public Lands, which petitioners accepted, and thereupon became vested with the right to acquire the lands in question, or acquired a contract within the protection of the Constitution of the United States, Article 1, Section 10, prohibiting the passing of laws impairing the obligations of contracts or divesting vested rights.

That thereafter, to-wit in 1906, by Act 85, the Legislature of the State of Louisiana, while, in express terms, recognizing the invalidity and illegality on their face of patents under which some of the lands applied for by petitioners were acquired, attempted to validate the same, by granting to the holders thereof the right to perfect their titles upon paying into the State Treasury the sum of $1.50 per acre.

That some of the lands applied for by petitioners had never been patented, but had been located or entered with Certificates which were absolutely null and void on their face, which entries were in violation of a prohibitory statute, Sections 4 and 5 of Act 75 of 1880, and hence null and void.

132 That the Legislature of 1906, by Act 86, while recognizing the absolute nullity of these Certificates, authorized the holders thereof to validate their titles by paying into the State Treasury $1.50 per acre and directed the Register of the Land Office to issue patents therefor.

That the entry of the lands in question with Certificates that were null and void on their face, and which entry could only be made under Sections 4 and 5 of Act 75 of 1880, *after actual money had been paid into the State Treasury,* was and is absolutely null and void, being in defiance of said Sections 4 and 5 of Act 75 of 1880; and in those cases where patents were issued on such Certificates, as shown on the face of the patents, such patents were and are absolute nullities * * * and do not segregate the lands from the Public Domain, and said lands were Public Lands and subject to entry at date of petitioners' application and tender of the purchase price therefor, and petitioners acquired by their legal applications and tenders a vested right and had a contract with the State of Louisiana within the protection of the Constitution of the United States, Article 1, Section 10.

That said Acts 85 and 86 of 1906 are unconstitutional, null and void, in so far as they attempt to ignore the vested right or contract of petitioners or impair the obligations thereof.

That petitioners under the authority of Pennoyer *vs.* McConnaughy, reported in the 140 U. S. at Page 1, filed their petition in the 22nd

Judicial District Court for the Parish of East Baton Rouge, Louisiana, under No. 1093 of its docket, setting forth the above facts and averring that the possessors of lands under these null patents and Certificates were about to pay into the State Treasury, under Acts 85 and 86 of 1906, $1.50 per acre for the purpose of perfecting their titles and that these acts were unconstitutional, null and void, as impairing their vested right or contract, in violation of Article 1, Section 10 of the Constitution of the United States; and petitioners prayed for an injunction enjoining and restraining the Register
133 of the Land Office, the State Auditor and the State Treasurer of the State of Louisiana from receiving said money from said possessors of these lands.

Petitioners represent that the Bowman-Hicks Lumber Company, the Vermillion Development Company, H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, F. H. Farwell, Henry L. Gueydan, Mrs. Amelia Gueydan, wife of Alfred Amar and Alfred Amar, Mrs. Marguerite Gueydan, wife of Louis Rauzier and Louis Rauzier, Mrs. Cecile Gueydan, wife of C. E. J. Fatou and C. E. J. Fatou, and Mrs. Amelie Montagne Gueydan, widow of Jean Pierre G[illegible]dan, intervened in said suit; but petitioners filed an exception to the jurisdiction of said Court to hear or pass upon said interventions which exceptions are still pending and undecided.

Petitioners represent that an exception of no cause of action was filed to this petition by defendants and the cause went to trial upon the petition of plaintiff and the exception of no cause of action or general demurrer;

Petitioners represent that upon the trial of this exception or demurrer all the allegations of fact in their petition are taken for true.

Petitioners represent that the District Court sustained the exception of no cause of action and dismissed plaintiffs' suit.

Petitioners represent that on appeal to the Supreme Court of the State of Louisiana, being the highest and last tribunal within the State of Louisiana, having jurisdiction of this controversy, said Court, did on January 9, 1908, render a judgment in favor of the defendants and against plaintiffs, maintaining their exception of no cause of action.

Petitioners further represent that they made in due time application for a rehearing of this cause and that said rehearing was refused on February 3, 1908, but that the Court rendered an opinion correcting its original opinion wherein it had held that Act 23
134 of 1880 authorized the issuance of McEnery Certificates and conceded in its opinion on rehearing that said Act did not in express terms authorize the issuance of McEnery Certificates; that thereupon the judgment became final.

Petitioners represent that they are aggrieved by said judgment, and that certain errors were committed to the prejudice of petitioners, the whole as will more fully and particularly appear by their Assignment of Errors which are annexed hereto and made part of this petition.

That in giving effect, as aforesaid, to Acts 85 and 86 of 1906, the judgment of the Supreme Court of Louisiana will cause petitioners

irremediable injury in that the applicants under said Acts will pay into the State Treasury the amount necessary to perfect their titles to petitioners' damage and injury, and the writ to be allowed herein should act as a supersedeas during the pendency of their suit.

Wherefore, petitioners pray that a writ of error may be allowed and issued herein to the Supreme Court of Louisiana, which now has the record in said cause, for the removal of said cause unto the Supreme Court of the United States to the end that the errors complained of may be duly corrected; and that the transcript of the record, proceedings and papers in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

Petitioners further pray that the parties defendant in said writ may be served with summons before the expiration of sixty days from February 3, 1908, and that in the order granting same, it be decreed that said writ shall act as a supersedeas pending these proceedings, upon petitioners giving good and solvent security according to law and your discretion.

And petitioners pray for all such further orders and decrees as in law and equity they are entitled.

135 (Signed) MORGAN & MILNER,
Attorneys.

(Signed) H. G. MORGAN,
(Signed) P. M. MILNER.

(Endorsed:) No. 16,771. Supreme Court of Louisiana. J. W. Frellsen & Co. J. W. Frellsen and J. D. Hill *vs.* A. W. Crandell, Register, Jas. W. Smith, Treasurer, Paul Capdeville, Auditor (Bowman-Hicks Lumber Co. *et al.* Intervenors.) Petition for a Writ of Error on behalf of J. W. Frellsen & Co. Filed Ap'l 1, 1908. (Signed) Paul E. Mortimer, Deputy Clerk.

Assignment of Errors.

Supreme Court of Louisiana.

No. 16771.

J. W. FRELLSEN & Co. (Composed of Joseph W. Frellsen and James D. Hill), Plaintiff,

vs.

A. W. CRANDELL, Register of the State Land Office; JAMES M. SMITH, State Treasurer, and PAUL CAPDEVILLE, State Auditor, Defendants; BOWMAN-HICKS LUMBER COMPANY; VERMILLION DEVELOPMENT COMPANY; H. J. LUTCHER, W. H. STARK, JOHN DIBERT, E. W. BROWN, and F. H. FARWELL, HENRY L. GUEYDAN, Mrs. AMELIA GUEYDAN, Wife of Alfred Amar, and ALFRED AMAR; Mrs. MARGUERITE GUEYDAN, wife of Louis Rauzier and LOUIS RAUZIER; Mrs. CECILE GUEYDAN, wife of C. E. J. Fatou and C. E. J. FATOU; Mrs. AMELIE MONTAGNE GUEYDAN, Widow of Jean Pierre Gueydan, Intervenors.

Now come plaintiffs in error in the above entitled cause and on their writ of error from the Supreme Court of the United States say

that in the record and proceedings in said cause there is manifest error to their prejudice which they assign as follows:

1. The Court errs when it gives effect to Acts 85 and 86 of 1906, attacked as unconstitutional as impairing plaintiffs' contract and vested right in violation of Article 1 Section 10 of the Constitution of the United States of America, by sustaining the *the* ex-
136 ception of no cause of action to plaintiffs' petition for a perpetual injunction against the Register of the Land Office, State Auditor and State Treasurer, prohibiting said officers from carrying out the provisions of said Acts.

11. The Court errs in holding that plaintiffs by their application to enter the lands in question and tender of the purchase price and admitted full compliance with Act 125 of 1902, relative to the sale of Public Lands, acquired no inceptive rights and has no contract or vested right which could be impaired by Acts 85 or 86 of 1906.

III.

The Court errs in holding that "patents" having issued, *whether legally or illegally*, the lands were thereby segregated from the Public Domain and were no longer subject to entry because the decisions of the United States Supreme Court cited in support of this doctrine do not so hold, these decisions never going further than to declare that a patent or entry *valid on its face* segregates the land.

IV.

The Court errs in refusing to hold that patents, which show on their face and by their recitals that they have been issued contrary to law and without authority, are absolutely null and void, and do not segregate the lands from the public domain.

V.

The Court errs when, after correcting the error of fact appearing in its first opinion, to the effect that Act 23 of 1880 authorized the issuance of McEnery Certificates, it ignores the contention of plaintiffs that the recitals in the patents that they were purchased with such McEnery Certificates, which Certificates in violation of Act 23 of 1880 were made "locatable upon any lands owned by the State," made the patents null and void on their face.

VI.

137 The Court errs when it failed to hold that the "entry" of lands made in defiance of a prohibitory statute was null and void.

VII.

The Court errs when—after holding that Acts 85 and 86 of 1906, did not validate the McEnery Certificates "locatable on any public lands," but, on the contrary, held them to be void and repudiated all payments for patents or certificates of entry made therewith—yet holds that a patent showing on its face that it was purchased with such scrip was valid.

VIII.

The Court errs in holding patents valid, which recite on their face that they were "purchased" with Certificates, all of which Certificates, as alleged in the petition, were made "locatable upon any lands owned by the State of Louisiana," in contravention of Act 23 of 1880, when the Court concedes that these Certificates are null and void, and concedes that Acts 85 and 86 of 1906 repudiate the validity of Patents purchased with these Certificates.

IX.

The Court errs in holding that plaintiffs' petition does not cover lands never patented, but still held under McEnery Certificates, "located upon any public lands," which the Court declares null and void, because the clear averment of the petition is that plaintiffs' applications and tenders covered *all* the lands *entered with McEnery Certificates;* that is, both the lands which had been patented and the lands which were still, at the date of the applications and tenders, held under these worthless McEnery Certificates; and that John McEnery did not recover any of these lands.

X.

The Court errs when it restricts the petition of plaintiffs to lands merely covered by patents when the petition clearly shows that lands still held only under Certificates were included; and hence,
138 if it is conceded that the petition covers lands not patented but held only under Certificates, the petition discloses a cause of action, since the Court holds that Acts 85 and 86 of 1906 did not validate same but repudiated all payments for Patents or Certificates of Entry made with illegal scrip.

XI.

The Court errs in not giving judgment for plaintiffs when the Court holds that: "as to McEnery scrip 'locatable on any public land,' Acts Nos. 85 and 86 pp. 141 and 142, of 1906 did not validate the same, but, on the contrary, repudiated all payment for Patents or Certificates of Entry made with illegal scrip", because the petition clearly avers:

(1) That all the lands described therein were located or entered with McEnery Certificates, which Certificates were on their face "locatable upon any vacant lands owned by the State of Louisiana."

(2) That none of the lands described in the petition were ever recovered by John McEnery, and he was only entitled to be paid out of lands recovered by him.

(3) That the patents which issued for some of the lands described in the petition recite or show on their face that they were purchased with these null and void Certificates.

(4) That *all* the Certificates issued to John McEnery, were, in defiance of a prohibitory statute, made "locatable upon any lands owned by the State of Louisiana."

(5) And that all of the Certificates they issued to John McEnery were actually located upon lands not recovered by him.

(6) Hence that none of the Certificates issued to him were located on lands recovered by him.

XII.

The Court errs in holding that plaintiffs have no contract or vested right or even inceptive right, because, if the *lands* in question *were* public lands, then plaintiffs did acquire a vested right under the authority of Pennoyer *vs.* McConnaughy, 140
139 U. S. page 1.

XIII.

The Court errs in holding that the lands in question were not Public Lands because Patents, *whether legal or illegal,* had been issued, for the reason that these Patents are invalid on their face, that is, by their recitals, they show that they were issued without authority of law, contrary to Act 23 of 1880 and Act 75 of 1880.

XIV.

That the Court erred in not overruling the exception of no cause of action and maintaining the petition and ordering the cause tried on its merits.

Wherefore, plaintiffs in error pray that the judgment of said Supreme Court be reversed, and for such further proceedings as law and justice may require.

(Signed) MORGAN & MILNER.
(Signed) H. G. MORGAN.
(Signed) P. M. MILNER.

(Endorsed:) No. 16,771. Supreme Court of Louisiana. J. W. Frellsen & Co. J. W. Frellsen and J. D. Hill *vs.* A. W. Crandell Register, James M. Smith, Treasurer, Paul Capdeville, Auditor, (Bowman-Hicks Lumber Co. *et al.* Intervenors) Assignment of Errors. Filed Apl. 1, 1908. (Signed) Paul E. Mortimer, Dep. Clerk.

140 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. W. Frellsen & Company, a partnership composed of Joseph W. Frellsen and James D. Hill, plaintiffs, and A. W. Crandell, Register of the State Land Office, James M. Smith, State Treasurer, and Paul Capdeville, State Auditor, defendants, and Bowman-Hicks Lumber Company *et al.*, intervenors, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under,

the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was
141 drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiffs as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

To operate as a supersedeas on bond conditioned according to law in sum of One Thousand ($1000) Dollars. March, 1908.

EDWARD D. WHITE,
Associate Justice.

[Endorsed:] No. 16771. Supreme Court of Louisiana. J. W. Frellsen & Co., J. W. Frellsen and J. D. Hill, *vs.* A. W. Crandall, Register, James M. Smith, Treasurer, and Paul Capdeville, Auditor (Bowman-Hicks Lumber Co. *et al.*, Intervenors). Writ of Error. Filed Apl. 1, 1908. Paul E. Mortimer, Dep. Clerk.

142 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before

you, or some of you, being the highest court of law or equity of said State in which a decision could be had in said suit between J. W. Frellsen & Company, a partnership composed of Joseph W. Frellsen and James D. Hill, plaintiffs, and A. W. Crandell, Register of the State Land Office, James M. Smith, State Treasurer, and Paul Capdeville, State Auditor, defendants and Bowman-Hicks Lumber Company *et al.*, intervenors, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiffs as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,
143 so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of March, in the year of our Lord one thousand nine hundred and eight.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

(Signed) EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

To operate as a supersedeas on bond — according to law in sum of One Thousand ($1,000) Dollars. March 30, 1908.

(Signed) EDWARD D. WHITE,
Associate Justice.

(Endorsed;) No. 16,771. Supreme Court of Louisiana. J. W. Frellsen & Co., J. W. Frellsen and J. D. Hill *vs.* A. W. Crandell, Register, James M. Smith, Treasurer, and Paul Capdeville, Auditor, (Bowman-Hicks Lumber Co. *et als.* Intervenors.) Copy of a writ of Error lodged in the Clerk's office of the Supreme Court of the

State of Louisiana in pursuance of the statute in such cases made and provided, this first day of April, 1908. (Signed) H. G. Morgan, (Signed) P. M. Milner, Attorneys of Plaintiff in error. Filed April 1st, 1908. (Signed) Paul E. Mortimer, Deputy Clerk.

144 *Bond for Writ of Error.*

Bond.

Know all men by these presents, That We, J. W. Frellsen & Company, Joseph W. Frellsen and James D. Hill, residents of the City of New Orleans, State of Louisiana, as Principals, and Fidelity & Deposit Co. of Maryland as Surety, are held and firmly bound unto Paul Capdeville, State Auditor, A. W. Crandell, Register of the Land Office, and James M. Smith, Treasurer of the State of Louisiana and the Bowman-Hicks Lumber Company, the Vermillion Development Company, H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, F. H. Farwell, Henry L. Gueydan, Mrs. Amelia Gueydan, wife of Alfred Amar, Alfred Amar, Mrs. Marguerite Gueydan, wife of Louis Rauzier, Louis Rauzier, Mrs. Cecile Gueydan, wife of C. E. J. Fatou, C. E. J. Fatou, and Mrs. Amelie Montagne Gueydan, widow of Jean Pierre Gueydan, in the full and just sum of One Thousand Dollars ($1000.00) to be paid to the said Auditor, the Register of the Land Office and Treasurer of the State of Louisiana and the Bowman-Hicks Lumber Company, the Vermillion Development Company, H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, F. H. Farwell, Henry L. Gueydan, Mrs. Amelia Gueydan, wife of Alfred Amar, Alfred Amar, Mrs. Marguerite Gueydan, wife of Louis Rauzier, Louis Rauzier, Mrs. Cecile Gueydan, wife of C. E. J. Fatou, C. E. J. Fatou, and Mrs. Amelie Montagne Gueydan, widow of Jean Pierre Gueydan, their certain Attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents

Sealed with our seals and dated this 27th day of March, in the year of our Lord, one thousand nine hundred and eight.

Whereas, lately, at the present Session of the Supreme Court of the State of Louisiana, towit, February 3, 1908, in a suit styled "J. W. Frellsen & Co. *vs.* A. W. Crandell, Register, *et als.*, No. 16,771" of the docket of said Court, wherein J. W. Frellsen & Co. Joseph W. Frellsen and James D. Hill, were Plaintiffs and the Auditor the Register of the Land Office and the Treasurer of the State of Louisiana were defendant- and the Bowman-Hicks Lumber Com-

145 pany, the Vermillion Development Company, H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, F. H. Farwell, Henry L. Gueydan, Mrs. Amelia Gueydan, wife of Alfred Amar, Alfred Amar, Mrs. Marguerite Gueydan, wife of Louis Rauzier, Louis Rauzier, Mrs. Cecile Gueydan, wife of C. E. J. Fatou, C. E. J. Fatou, and Mrs. Amelia Montagne Gueydan widow of Jean Pierre Gueydan, were intervenors a final judgment was rendered against the said Plaintiffs and in favor of defendants, and the said Plaintiffs

having obtained a writ of error and filed a copy thereof in the Clerk- Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Defendants, citing and admonishing them to be and appear before the United States Supreme Court to be holden at Washington, District of Columbia within thirty days from the date thereof:

Now the condition of the above obligation is such, that if the said Plaintiffs shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) J. W. FRELLSEN & CO.,
(Signed) J. W. FRELLSEN,
(Signed) J. D. HILL,
[SEAL.] FIDELITY & DEPOSIT CO. OF MD.,
(Signed) By WYATT H. INGRAM, JR., *Local Director.*

Attest:
CHAS. H. BLACK,
General Agent.

Approved by
(Signed) EDWARD D. WHITE,
Associate Justice Supreme Court U. S.

146 *Statement of the Financial Condition of the Fidelity and Deposit Company of Maryland, at the close of business, December* 31, 1907

Resources.

Par value.		Book value.
	Real Estate (Fidelity Building and 210-212 N. Charles Street, and 10 W. Lexington Street,) Assessed Valuation $804,000.....	$757,000.00
$145,000	U. S. Government Philippine Island 4 per cent Bonds.....	155,150.00
£53,675	British Consols	222,750.00
$125,000	State of Georgia 4½ per cent Bonds, 1912-15-16,	125,000.00
30,000	State of Tennessee Settlement 3 per cent Bonds	27,000.00
776,000	Baltimore City Stock 3½ per cent 1928-30-36-40-45	756,600 00
200,000	City of New York (N. Y.) Export Dock 3½ per cent Bonds.....	184,000.00
50,000	City of Buffalo (N. Y.) 3½ per cent bonds....	46,000.00
30,000	City of Cleveland (O.) 4 per cent Bonds.....	30,000.00
25,000	City of Havana (Cuba) 6 per cent Bonds.....	25,625.00
12,500	City of Petersburg (Va.) Refunding 5 per cent Bonds.....	12,500.00
25,000	City of Richmond (Va.) Registered 4 per cent Bonds.....	23,750.00
30,000	Montgomery County (Ala.) Road and Bridge 5 per cent Bonds..	30,000.00
115,000	United Railways and Electric Company of Baltimore First Mortgage 4 per cent Bonds,	93,150.00
100,000	Baltimore Traction Co. N. B. Division 5 per cent Bonds.....	105,000.00

Par value.		Book value.
100,000	Consolidated Gas Co. First Mortgage 5 per cent Bonds	$102,500.00
100,000	Atchison, Topeka & Santa Fe Ry. General Mortgage 4 per cent Bonds	94,500.00
100,000	Atlantic Coast Line R. R. First Mortgage 4 per cent Bonds	83,500.00
100,000	Baltimore & Ohio R. R. Prior Lien 3½ per cent Bonds	88,000.00
100,000	Charleston & Western Carolina R. R. First Mortgage 5 per cent Bonds	99,000.00
100,000	Chicago, Rock Island & Pacific Ry. General Mortgage 4 per cent Bonds	93,000.00
100,000	Georgia & Alabama R. R. First Mortgage 5 per cent Bonds	95,500.00
100,000	Northern Pacific Ry. Prior Lien and Land Grant 4 per cent Bonds	99,000.00
100,000	Oregon Short Line R. R. Refunding 4 per cent Bonds	84,000.00
100,000	Union Pacific R. R. 4 per cent Bonds	98,000.00
50,000	New York Central & Hudson River R. R. 3½ per cent Bonds	44,000.00
50,000	St. Louis, Iron Mountain & Southern Ry. 5 per cent bonds	51,500.00
	2,000 Shares United Railways and Electric Co. of Baltimore Stock	20,000.00
	6,391 Shares The Fidelity Trust Co. of Baltimore Stock	1,278,200.00
	2,500 Shares Citizens' National Bank Stock	80,000.00
	1,600 Shares National Mechanics' Bank Stock,	41,600.00
	473 Shares Farmers and Merchants' National Bank Stock	21,285.00
	271 Shares National Union Bank of Maryland Stock	30,350.00
	200 Shares First National Bank Stock	26,000.00
	164 Shares National Bank of Baltimore Stock	18,860.00
	121 Shares Merchants' National Bank Stock,	20,570.00

Loaned to National Banks, Secured by Collateral.

70,000	U. S. Government 3 per cent Bonds	70,700.00	
30,000	U. S. Government Registered 4 per cent Bonds	35,400.00	
94,000	Baltimore City Stock, 1940 Refunding	91,650.00	
	Agents' balances (less commissions)	118,154.80	
	Premiums in course of collection (home office)	4,947.28	
	Cash in Banks	284,152.50	
	Total		$5,767,894.58

Liabilities.

Capital Stock	$2,000,000 00	
Premium Reserve	778,539.17	
Reserve for claims adjusted (checks out)	31,628.05	
Reserve for contingent claims	576,748.46	
Reserve for Taxes on premiums (payable in 1908)	35,000.00	
Surplus	2,345,978.90	
Total		$5,767,894.58

STATE OF MARYLAND,
City of Baltimore, sct:

I Thos. L. Berry Assistant Treasurer, of the Fidelity and Deposit Company of Maryland, do hereby certify, that the aforegoing is a true statement of the assets and liabilities of said Company as of December 31st, 1907, taken from the books and records of said Company, and that said Company has not since said 31st, day — December, 1907, sustained any loss affecting its financial condition.

[Seal Fidelity & Deposit Co., Maryland, Incorporated 1890.]

THOS. L. BERRY,
Assistant Treasurer.

STATE OF MARYLAND,
City of Baltimore, sct:

Subscribed and sworn to before me, a Notary Public of the State of Maryland, in the City of Baltimore, this 9th day of January, A. D. 1908.

[Seal Fred. S. Axtell, Notary Public, Baltimore, Md.]

FRED. S. AXTELL,
Notary Public.

147 (Endorsed:) No. 16,771. Supreme Court of Louisiana. J. W. Frellsen & Co. J. W. Frellsen and J. D. Hill, *vs.* A. W. Crandell, Register, James M. Smith, Treasurer, and Paul Capdeville, Auditor. (Bowman-Hicks Lumber Company, *et al.* Intervenors.) Bond for Writ of Error. Filed April 1, 1908. (Signed) Paul E. Mortimer, Deputy Clerk.

148 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing One hundred and Forty-seven pages, (147), contain a full true and complete copy of the transcript of the proceedings had in the 22nd, Judicial District Court for the Parish of East Baton Rouge, in a certain suit wherein J. W. Frellsen and Company were Plaintiffs, and A. W. Crandell, Register, and Others, were Defendants. Bowman-Hicks Lumber Company, H. J. Lutcher *et al.*, Vermillion Development Company, Mrs. A. M. Gueydan and Others, Intervenors, and also of all proceedings had in this Court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 16,771.

In testimony whereof I have hereunto set my hand and affixed the seal of this Honorable Court, at the City of New Orleans this Tenth day of April, *Anno Domini* One thousand nine hundred and

eight, and in the One hundred and thirty-second year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, Clerk.

149 UNITED STATES OF AMERICA, *ss:*

To A. W. Crandell, Register of the State Land Office, James M. Smith, State Treasurer, and Paul Capdeville, State Auditor, and Bowman Hicks Lumber Co., Vermillion Development Co., H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, F. H. Farwell, Henry L. Gueydan, Mrs. Amelia Gueydan, wife of Alfred Amar, Alfred Amar, Mrs. Marguerite Gueydan, wife of Louis Rauzier, Louis Rauzier, Mrs. Cecile Gueydan, wife of C. E. J. Fatou, C. E. J. Fatou, and Mrs. Amelia Montagne Gueydan, widow of Jean Pierre Gueydan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Louisiana wherein J. W. Frellsen & Company, a partnership composed of Joseph W. Frellsen and James D. Hill, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this 30th day of March, in the year of our Lord one thousand nine hundred and eight.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

150 Service accepted for the Register of the State Land office, the State Treasurer and State Auditor, respectively.

New Orleans, April 1st, 1908.

WALTER GUION,
Att'y Gen'l.
PUJO, MOSS & SUGAR,
By F. P. PUJO,
Att'ys for H. J. Lutcher, W. H. Stark, John Dibert, E. W. Brown, and F. H. Farwell.
HALL & MONROE,
Att'ys Vermillion Development Co.
McCOY, MOSS & KNOX,
Att'ys Bowman-Hicks Lu'b'r Co.,
By T. M. MILNER.

Service accepted at request of plaintiff in error, reserving all right and especially the right to deny that we are parties to the proceedings.

FITCHE & ROGERS,

Attorneys for H'y L. Gueydan, Mrs. Amelia Gueydan, Wife of Alfred Amar, Alfred Amar, Mrs. Marguerite Gueydan, Wife of Louis Rauzier, Louis Rauzier, Mrs. Cecile Gueydan, Wife of C. E. J. Fatou, C. E. J. Fatou, and Mrs. Amelie Montagne Gueydan, Widow of Jean Pierre Gueydan.

16,771. Supreme Court of Louisiana. Filed Apr. 2, 1908. Paul E. Mortimer, Dep. Clerk.

Endorsed on cover: File No. 21,112. Louisiana supreme court. Term No. 129. J. W. Frellsen & Company, a partnership composed of Joseph W. Frellsen and James D. Hill, plaintiffs in error, *vs.* A. W. Crandell, register of the State land office, *et al.* Filed April 14th, 1908. File No. 21,112.

Supreme Court of the United States.

No. 129.

J. W. FRELLSEN AND COMPANY,
A Partnership Composed of JOSEPH W. FRELLSEN and JAMES D. HILL, Plaintiffs in Error,

VERSUS

A. W. CRANDELL,
Register of the State Land Office and Others.

General Statement of the Case and the Issue.

Plaintiffs in error, treating the lands described in their petition as Public Lands, and accepting the invitation of the State of Louisiana to purchase its Public Lands, made applications, on March 28, 1905, under the provisions of Act 125 of 1902 (see appendix), amending and re-enacting Section 10 of Act No. 75, approved April 17, 1880, as amended and re-enacted by Act 195 of 1898, to enter all of the lands described in their petition, and on the same day made a legal tender of $1.50 per acre, the purchase

price stipulated by the aforesaid statute for said land, which tender was made in legal tender currency of the United States of America, and strictly according to law, to the Register of the State Land Office, the Auditor of the State and the Treasurer of the State, all of whom refused to accept said tenders for the reason, as shown by the written refusal of the Register of the Land Office endorsed on the back of said applications and tenders, that the lands had theretofore been entered by or patented to others.

Subsequent to the application of plaintiffs in error to enter these lands and their tenders of the purchase price—to-wit: in 1906, the Legislature of Louisian passed two Acts, known as Acts No. 85 and No. 86 of 1906, which recognized the invalidity, upon their face, of the patents and the nullity, upon their face, of the certificates of entry under which the present holders claim title to the lands described in the petition, and authorized to validation of said patents and certificates of entry, upon the payment of the present owners of $1.50 per acre to the State.

Plaintiffs in error contend that these acts of the Legislature recognized the absolute nullity of the patents and certificates of entry, and, hence, that the lands described therein remained public lands, and that when plaintiffs in error accepted the invitation of the State to purchase these public lands, and made applications therefor on March 28, 1905, and tendered the purchase price of $1.50 per acre to the proper officers of the State, and did every-

thing in their power to secure certificates of entry and purchase said lands, the State could not, by subsequent legislation, take this right away from them if, at the date of their application to enter and tender of the purchase price, these lands or any part thereof were in fact public lands.

The plaintiffs in error, therefore, applied for an injunction against the Register of the Land Office, the Auditor of the State and the Treasurer of the State, enjoining and prohibiting them, and each of them, from carrying out the provisions of Acts 85 and 86 of 1906, authorizing the present owners to validate their titles by paying into the State Treasury the sum of $1.50 per acre, alleging that Acts 85 and 86 of 1906 were unconstitutional and void and violative of the Constitution of the United States, Article 1, Section 10, prohibiting the passing of any law impairing the obligations of contracts, or of divesting vested rights. A preliminary injunction was granted.

The present claimants of some of the lands in question then intervened in the suit.

The plaintiffs in error filed exceptions to the jurisdiction of the Court to entertain these interventions, which exceptions have never been tried. (Tr., pp. 67 to 69.)

The defendants, A. W. Crandell, Register, and Paul Capdevielle, Auditor, filed an exception of no cause of action. (Tr., p. 67.) The judgment of the lower Court,

or District Court, maintained the exception of no cause of action, and the plaintiffs in error took a suspensive appeal to the Supreme Court of the State.

The Supreme Court of the State affirmed the judgment of the lower Court. A rehearing was refused, but the opinion of the Court corrected an error of fact, found in the original opinion. (Tr., p. 89.)

The plaintiffs in error made due application for a writ of error to this Honorable Court, which was granted, and the case is now at issue between plaintiffs in error and the Register of the State Land Office and Auditor, defendants in error, upon the exception of no cause of action.

The case of the intervenors is, therefore, not before the Court at this time.

Under the practice in the State of Louisiana, on the trial of an exception of no cause of action, all the facts and allegations of the petition are taken as true.

The petition in this case divides the lands described into two classes: (1) those held under patents; (2) those held under cartificates only, where no patents have ever issued.

I.

The Supreme Court of Louisiana holds, without qualification, that a patent (hence a patent **whether** invalid or null and void on its face) under the great Seal of the State, segregates the land from the public domain, vests

the legal title in the patentee and divests the Land Department **of jurisdiction.** (Tr., p. 85.)

The cases of **In re Emblem, 161 U. S. 52,** and **Emblem vs. Lincoln Land Co., 184 U. S. 660,** are given as authority for this unqualified and, we think, erroneous statement of the law.

We hold that your Honors have **never** declared that a patent, **null and void, on its face,** segregates the land from the public domain.

We hold this is reversible error, as we contend that the Legislature of Louisiana has by Act 85 of 1906, recognized the invalidity on their face of the patents purchased with McEnery scrip. Hence, the lands described in said patents remained public lands.

II.

The Supreme Court of Louisiana holds that the Legislature of Louisiana, by Act 86 of 1906, repudiated payments made for certificates of entry with scrip not legally receivable in lieu of money, and, hence, said certificates of entry were null and void and did not segregate the lands in question * * * but, in the same breath, the Court, in order to deny plaintiffs in error a standing in Court as to these lands, held under such palpably null and void certificates, declared, as a finding of fact on the face of the petition, that plaintiffs in error **"made no application to enter any other lands than those previously patented."**

In other words, the Supreme Court of Louisiana, finding that Act 85 of 1906 had recognized the nullity of certificates of entry purporting on their face to have been paid for by certificates or warrants not legally receivable in payment, and recognizing that such null certificates of entry (no patents having issued) did not segregate the lands from the public domain * * * defeated the action of plaintiffs in error by an unfortunate mis-statement of fact—to-wit: That the petition did not cover lands held only under certificates of entry but only lands that had been patented.

We take it that the Supreme Court of the United States in protecting its citizens from having their rights divested and their contracts impaired, will find for itself what facts appear upon the face of the petition.

We, therefore, assume that if a mere reading of the petition will show that the action is brought on or the petition includes lands held under certificates of entry as well as lands held under patents, this Court will reverse the finding of the Supreme Court of Louisiana, maintaining the exception of no cause of action.

The question before this Court now is not how much of a cause of action have plaintiffs in error, but, under these acts of the Legislature now under investigation and the opinion of the Supreme Court of Louisiana itself, have plaintiffs in error a cause of action?

It clearly appears, under the decision of the Supreme Court of Louisiana that if plaintiffs in error had included

in their petition lands held solely under certificates of entry, they would have a cause of action.

The question then is, are such lands covered or referred to in the petition?

This is a question of fact on the face of the petition, and the answer to this question is to be found in the following recitals of facts.

THE FACTS OF THE CASE, AS THEY APPEAR FROM THE PETITION.

The petition avers:

1. That by donation made under acts of Congress, approved March 2, 1849, and September 28, 1850, title was vested in the State of Louisiana to "the whole of those swamp and overflowed lands which may be or are found unfit for cultivation" within her borders. (Tr., p. 1.)

2. That the "hereinbefore-described lands" were embraced in said grants as appears by the lists made pursuant to Section 2 of Act approved March 2, 1849, and recorded in the Books of Conveyances for the various parishes of the State. (Tr., p. 1.)

3. That the Legislature in 1880, Act 23 of 1880, authorized the Governor of the State to employ counsel to assert the rights of the State to lands donated to the State by the Federal Government, said act reading as follows:

"Section 1. Be it enacted by the General Assembly

of the State of Louisiana, That the Governor of the State be, and he his hereby, authorized to take the necessary steps to institute proceedings, to employ counsel and to make the necessary agreement or agreements to recover for the State lands situated in the State of Louisiana, and donated by several Acts of Congress to the State for divers purposes; some of which has been illegally disposed of by the Federal Government, and other portions, though listed to the state, have been improperly suspended or rejected by the Federal Government, and the approval to the State refused, or to recover the value of said lands in money or government scrip; **provided** that the State shall incur no cost or expense in the prosecution of said claims other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered. The Governor is specially authorized herein to make all agreements or contracts to carry out the purposes of this act." (Tr., p. 2.)

"Sec. 2. Be it further enacted, etc., That any settler under or holder of a patent from the Land Office of the United States or purchaser of same, under existing laws, shall not be in any manner affected by this resolution."

4. That said act was signed and approved March 8, 1880, and on March 20, 1880, Louis A. Wiltz, Governor, entered into a written contract with John McEnery, which, among other stipulations, provided:

"**First.** That John McEnery 'promises and agrees to employ his diligent and best efforts to recover for the State all land donated to her by the General Gov-

ernment as swamp lands, and which have been improperly suspended or rejected by the United States Government; and all lands to which the State had valid claims, and to the prejudice of the State, or to recover the value of lands in money or scrip, to be paid or issued by the United States, in lieu of lands sold, or otherwise disposed of by the Government of the United States, to which the State had valid claims, including therein the claims of the State upon the General Government for lands of their value, for school purposes; for the amounts in money due the State, by virtue of the acts of Congress in relation to military bounty land warrants, or other location, and also for internal improvement purposes."

"**Second.** The State of Louisiana, on her part, agrees to pay John McEnery **fifty per centum of the land, money or scrip recovered,** to be paid as provided in said Act 23.

"Where **lands in kind** are recovered, the compensation as aforesaid, of the said McEnery, shall be represented in scrip or certificates, to be issued by the Register of the Land Office of the State, **and locatable upon any lands owned by the State.**" (Tr., p. 2.)

5. Petition avers:

"Petitioner avers further that when he incorporated into the agreement the last clause of Article 2 of said contract with said John McEnery, Governor Wiltz exceeded the authority conferred upon him by the act, it being contrary to its plain and unambigu-

ous requirements that where lands in kind were recovered, the compensation of said John McEnery should be out of said lands, as set forth in these words: '**Provided,** that the State shall incur no cost or expense in the prosecution of said claim **other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered.**'

"Petitioner avers that the interpolation of the last clause in the contract with said John McEnery was **ultra vires** of the Governor, illegal, null and void, and conveyed to the Register of the Land Office no right to issue to said John McEnery certificates **locatable upon any lands owned by the State;** that the illegal agreement and the issuance of scrip thereunder was a fraud upon the State in that it was an attempt, by the issuance of spurious scrip to substitute for the more or less worthless lands recovered by McEnery, under his contract, valuable lands already owned by the State, and in no manner connected with or recovered under the said contract; and that the Register of the State Land Office had no right, power or authority to issue or sign any such certificates as said illegal clause in said contract contemplated should be issued and signed by him."

6. That by Act 106 of 1888, Act No. 23 of 1880 was repealed, and Section 2 of the repealing Act provides: "That the act of agreement made between Louis Wiltz, Governor of the State, and John McEnery, made March 20, 1880, purporting to be under authority of said Act No. 23, is hereby abrogated and terminated'; and that this repealing act took effect January 1, 1889. (Tr., p. 3.)

The petition avers:

> 7. That the Register of the State Land Office, acting under the provisions of this illegal and void contract, and without power, right or authority under any law of this State so to do, issued to the said John **McEnery a large number of the certificates,** the issuance of which was provided for only in and by said illegal clause contained in said contract, covering in the aggregate a vast acreage, **which certificates were made locatable upon any** vacant land granted to the State by Acts of Congress, approved March 2, 1849, and September 28, 1850; that these certificates were sold and assigned by the said John McEnery, **whose assignees located them upon the public lands hereinafter described,** which had not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, **for which patents were thereafter illegally and fraudulently issued to some of said assignees,** while others stood upon their certificates. (Tr., p. 3.)

The petition avers:

> 8. That the **hereinafter-described** lands were not embraced in the lands recovered by said John McEnery, and were not recovered by him to the State under the aforesaid contract, and that the issuance to him, as aforesaid, by the Register of the State Land Office, of said certificates as compensation for the recovery of other lands to the State, under the provisions of said contract, was illegal, null and void, and **ultra vires,** as neither the Governor nor the Register of the State Land Office had any right to issue or consent to the issuance of such certificates,

and that said certificates conferred no right upon said John McEnery or his assignee in and to the lands located therewith; that the patents granted thereunder are null and void and ultra vires, and neither the issuance of the certificates nor the granting of the patents had the effect of segregating the lands purported to be conveyed from the public domain.

That these certificates and these patents are absolutely null and void, and did not divest the interest and title of the State in or to said lands.

That the lands which they purport to convey never became segregated by such conveyance from the public domain, but remained subject, as such public lands to sale and entry, under existing laws, by the first applicant therefor. (Tr., pp. 3 and 4.)

Petition avers:

9. That, accepting the invitation of the State of Louisiana to make entry to its public lands, they, on March 28, 1905, made applications to Honorable A. W. Crandell, Register of the State Land Office, under provisions of Act No. 125 of 1902, amending and re-enacting Section No. 10 of Act No. 75, approved April 17, 1880, as amended and re-enacted by act No. 195 of 1898, to enter the following lands, which applications were as follows—to-wit, etc. (Tr., p. 4):

Petition avers:

10. That on the same day they made a legal tender of one dollar and fifty cents for each and every acre of land applied for, which tender was made in

legal tender money of the United States of America, and according to law, but was wrongfully refused by the said A. W. Crandell, Register of the State Land Office; that petitioners, on the same day made demand upon Paul Capdevielle, Auditor of the State, to accept their said tender and issue warrants on the Treasurer of the State to accept said purchase price of said lands; that the Auditor wrongfully refused to issue said warrants upon the ground that the Register of the Land Office had refused the tenders of petitioners; that, thereupon, your petitioners made another legal tender to James M. Smith, State Treasurer, who likewise wrongfully declined same; the whole as appears by reference to the original applications of petitioners, and indorsements or notes entered upon the Tract Book of the written refusal of the Register of the Land Office, Auditor of the State and State Treasurer, on file in the office of the Register of the State Land Office, which are hereby specially referred to and made part of this petition.

That the Register of the Land Office refused petitioners' applications and tenders upon the grounds stated in his written refusal made part hereof—to-wit: That said lands had been theretofore entered or patented to others. (Tr., p. 13.)

Petition avers:

11. That in every case, the lands herein described were entered with illegal McEnery Scrip or certificates, heretofore set out, and the **patents that were issued therefor** refer upon their face either to Act No. 23 of 1880 or to the certificate number which

certificate showed upon its face it was issued under Act 23 of 1880, and said certificates and said patents were and are absolutely null and void, illegal and of no effect.

That they are the **first and only applicants for said lands under the provisions of Act No. 125 of 1902, or of any other law of this State**, since the date of the issuance of said illegal McEnery certificates and patents purchased therewith, and that upon complying with the provisions of said Act No. 125 of 1902, and making legal tender of the purchase price of said lands, **they became vested with the right to acquire said lands**. (Tr., p. 13.)

Petition avers:

12. That the Legislature of this State has just passed Act No. 85 of 1906, known as House Bill No. 223, approved the — day of July, 1906, entitled:

"An act declaring that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees, or transferrees, shall be confirmed as applicants for said lands, from the date of the issuance of said patents, where the said patents were not paid for in money, but were paid for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees of said patents to validate and perfect their title to the lands covered by said patents or to any part or subdivision of such lands within one year from date of passage

of this act by paying therefor in cash the price of one dollar and fifty cents per acre," and

Act No. 86 of 1906, known as House Bill No. 224, approved the — day of July, 1906, entitled:

"An act declaring that present holders and owners of certificates of entry for public lands, issued by the State of Louisiana, their heirs, assignees, or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said certificates of entry, where the said certificates of entry were not paid for in money, but were paid for by cercates or warrants for scrip which were not legally receivable in payment for such certificates of entry, and authorizing such present holders and owners of said certificates of entry, their heirs, assignees, or transferrees to validate and perfect their title, to the lands covered by the said certificates of entry or to any part or subdivision of such lands, within one year from date of passage of this act, by paying therefor in cash the price of one dollar and fifty cents per acre."

That said Act No. 85 of 1906, provides that upon present holders of patents to the lands described in this petition making the payment of one dollar and fifty cents per acre:

"The said patents shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

That said Act No. 86 of 1906, provides that upon the present holders of certificates of entry of lands described in this petition making the payment of

one dollar and fifty cents per acre, "said certificates of entry shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

That those acts are unconstitutional, null and void, being violative of the provisions of both the Constitutions of the United States of America, and of the State of Louisiana. (Tr., pp. 13 and 14.)

Petition avers:

13. That said acts are unconstitutional and violative of Article 166 of the Constitution of this State of 1898 and of the Constitution of the United States, Article 1, Sec. 10, prohibiting the passing of any law impairing the obligations of contracts, or of divesting vested rights, unless for purposes of public utility, and for adequate compensation previously paid, in that your petitioners have an implied contract with the State of Louisiana to purchase the lands offered for sale and applied for by petitioner the purchase price of which was duly tendered, but wrongfully refused, and in that your petitioners have a vested right to acquire said lands, under their said applications and tenders, and said acts, if carried into effect, will deprive your petitioners of the right to acquire these lands by giving title thereto to third parties, who have never legally applied for same, nor have any legal title thereto. (Tr., p. 15.)

Petition avers:

14. That said acts are violative of the Constitution of the United States, Article I, Sec. 10, in that it is attempted thereby to disregard petitioners' applica-

tions to enter said lands and their tenders of the purchase price of same, which gave petitioners a vested right to acquire said lands, and to give a retroactive effect to the payment now into the State Treasury of a price per acre different from that required under the laws in force at the date of the issuance of the alleged certificates and patents would be to divest petitioners of their vested rights to acquire said lands according to the laws in force at the date of their appication and tenders. (Tr. p. 15.)

Petition avers:

15. That the holders of said illegal certificates and patents are about to apply to the Register of the Land Office of this State, the State Auditor, or the State Treasurer to be allowed to pay into the State Treasury the sum of $1.50 per acre. (Tr. p. 15.)

Petition avers:

16. That petitioners will suffer an irreparable injury, and its vested rights be impaired and divested, if the Register of the State Land Office, the State Auditor, or the State Treasurer, shall receive or authorize the receipt of one dollar and a half per acre stipulated to be paid in said acts; that the amount involved herein, or petitioners' interest in the lands described in this petition, and thus attempted to be put beyond petitioners' reach, largely exceeds the sum of five thousand dollars; that an injunction is necessary, restraining and enjoining the Register of the Land Office, the Auditor of this State and the State Treasurer, and each of them, from ac-

cepting or receiving, or authorizing the receipt of the payment of one dollar and a half per acre offered or tendered by any present holder or owner of patents or certificates purporting to convey or to cover any of the lands described in this petition, or from doing any act or taking any step having for its object the carrying out of the provisions of Acts 85 and 86 of 1906. (Tr. pp. 15 and 16.)

17. Wherefore they pray that the Honorable A. W. Crandell, Register of the State Land Office, the Honorable Paul Capdeville, Auditor of the State, the Honorable James M. Smith, Treasurer of the State, be cited to appear and answer this petition, and that, the annexed affidavit considered, an injunction issue herein directed to said defendants, enjoining, restraining and prohibiting them, and each of them from receiving, or authorizing the receipt of one dollar and a half per acre offered or tendered by any present owner or holder of patents or certificates purporting to convey or covering any of the lands described in this petition and from doing any act or taking any step, having for its object the carrying out of the provisions of Acts 85 and 86.

And petitioners pray that after due proceedings there be judgment in their favor and against said defendants, and each of them, making said injunction perpetual and forever enjoining, restraining and prohibiting them, or either of them from receiving or authorizing the receipt of one dollar and a half per acre offered or tendered by any present holder or owner of patents or certificates purporting to convey

or covering any of the lands described in this petition; and petitioners pray that said acts 85 and 86 of 1906 be declared unconstitutional, null and void and of no effect; and petitioners pray for all general and equitable relief. (Tr. p. 16.)

ASSIGNMENT OF ERRORS.

Planitiffs in error have assigned fourteen errors which may be divided into three groups:

(A) Those that urge that the Supreme Court of Louisiana erred when it declared that plaintiffs in error made no application to enter any other lands than those previously patented, viz.:

IX.

The Court errs in holding that plaintiffs' petition does not cover lands never patented, but still held under McEnery certificates "located upon any public lands," which the Court declares null and void, because the clear averment of the petition is that plaintiffs' applications and tenders covered **all** the lands **entered with McEnery Certificates;** that is, both the lands which had been patented and the lands which were still, at the date of the applications and tenders, held under these worthless McEnery certificates; and that John McEnery did not recover any of these lands. (Tr. p. 94.)

X.

The Court errs when it restricts the petition of plaintiffs to lands merely covered by patents when the petition clearly shows that lands still held only

under certificates were included; and hence, if it is conceded that the petition covers lands not patented but held only under certificates, the petition discloses a cause of action, since the Court holds that Acts 85 and 86 of 1906 did not validate same but repudiated all payments for patents or certificates of entry made with illegal scrip. (Tr. p. 94.)

XI.

The Court errs in not giving judgment for plaintiffs when the Court holds that: "as to McEnery scrip 'locatable on any public land,' Acts Nos. 85 and 86 pp. 141 and 142, of 1906 did not validate the same, but, on the contrary, repudiated all payment for patents or certificates of entry made with illegal scrip," because the petition clearly avers:

(1) That all the lands described therein were located or entered with McEnery Certificates, which certificates were on their face "locatable upon any vacant lands owned by the State of Louisiana."

(2) That none of the lands described in the petition were ever recovered by John McEnery, and he was only entitled to be paid out of lands recovered by him.

(3) That the patents which issued for some of the lands described in the petition recite or show on their face that they were purchased with these null and void certificates.

(4) That all the certificates issued to John McEnery were, in defiance of a prohibitory statute, made "locatable upon any lands owned by the State of Louisiana."

(5) And that all of the certificates they issued to John McEnery were actually located upon lands not recovered by him.

(6) Hence that none of the certificates issued to him were located on lands recovered by him. (Tr. pp. 94 and 95.)

(B) Those that urge that the Supreme Court of Louisiana erred when it held and gave as its authority that this Court had declared that a patent (whether invalid on its face or not) segregated the lands from the public domain and vested the legal title in the patentee, viz:

III.

The Court errs in holding that "patents" having issued, **whether legally or illegally,** the lands were thereby segregated from the public domain and were no longer subject to entry because the decisions of the United States Supreme Court cited in support of this doctrine do not so hold, these decisions never going further than to declare that a patent or entry **valid on its face** segregates the land. (Tr., p. 93.)

IV.

The Court errs in refusing to hold that patents, which show on their face and by their recitals that they have been issued contrary to law and without authority, are absolutely null and void, and do not segregate the lands from the public domain. (Tr. p. 93.)

V.

The Court errs when, after correcting the error of fact appearing in its first opinion, to the effect that Act 23 of 1880 authorized the issuance of McEnery certificates, it ignores the contention of plaintiffs that the recitals in the patents that they were purchased with such McEnery certificates, which certificates in violation of Act 23 of 1880 were made "locatable upon any lands owned by the State," made the patents null and void on their face. (Tr. p. 93.)

VI.

The Court errs when it failed to hold that the "entry" of lands made in defiance of a prohibitory statute was null and void. (Tr. p. 93.)

VII.

The Court errs when—after holding that Acts 85 and 86 of 1906, did not validate the McEnery certificates "locatable on any public lands," but, on the contrary, held them to be void and repudiated all payments for patents or certificates of entry made therewith—yet holds that a patent showing on its face that it was purchased with such scrip was valid. (Tr. p. 93.)

VIII.

The Court errs in holding patents valid, which recite on their face that they were "purchased" with certificates, all of which certificates, as alleged in the petition, were made "locatable upon any lands

owned by the State of Louisiana," in contravention of Act 23 of 1880, when the Court concedes that these certificates are null and void, and concedes that Acts 85 and 86 of 1906, repudiate the validity of patents purchased with these certificates. (Tr. p. 94.)

(C) Those that urge that the Supreme Court of Louisiana erred when it declared, under its findings above, that the lands not being public lands, plaintiffs in error acquired no inceptive or vested rights and have no contract by reason of their application to enter and tender of the purchase price of the lands, viz.:

I

The Court errs when it gives effect to Acts 85 and 86 of 1906, attacked as unconstitutional as impairing plaintiffs' contract and vested right in violation of Article 1, Section 10 of the Constitution of the United States of America, by sustaining the exception of no cause of action to plaintiffs' petition for a perpetual injunction against the Register of the Land Office, State Auditor and State Treasurer, prohibiting said officers from carrying out the provisions of said Acts. (Tr. pp. 92 and 93.)

II.

The Court errs in holding that plaintiffs by their application to enter the lands in question and tender of the purchase price and admitted full compliance with Act 125 of 1902, relative to the sale of public lands, acquired no inceptive rights and has no contract or vested right which could be impaired by Acts 85 or 86 of 1906. (Tr., p. 93.)

XII.

The Court errs in holding that plaintiffs have no contract or vested right or even inceptive right, because, if the **lands** in question **were** public lands, then plaintiffs did acquire a vested right under the authority of **Pennoyer vs. McConnaughy, 140 U. S. p. 1.** (Tr. p. 95.)

XIII.

The Court errs in holding that the lands in question were not public lands because patents, **whether legal or illegal,** had been issued, for the reason that these patents are invalid on their face, that is, by their recitals, they show that they were issued without authority of law, contrary to Act 23 of 1880, and Act 75 of 1880. (Tr. p. 95.)

XIV.

That the Court erred in not overruling the exception of no cause of action and maintaining the petition and ordering the cause tried on its merits. (Tr., p. 95.)

ARGUMENT.

The Supreme Court of Louisiana concedes the principle announced by this Court in **Pennoyer vs. McConnaughy, 140 U. S., p. 1,** that, if the lands described in the petition of error were **in fact** public lands at the date of the application and tender of plaintiffs in error, plaintiffs in error acquired a vested right.

But the Court holds that the plaintiffs in error acquired no vested right or even inceptive right to enter the lands in question, because a patent (whether null and void on its face or not) segregates the land from the public domain, and the Court finds as a fact:

(1) That the petition avers that patents had issued for **all** the lands in question.

(2) That the petition shows that planitiffs in error "made no application to enter any other lands than those previously patented."

Upon this unfortunate misstatement of fact, it concludes as follows:

> " 'Hence this case must be considered and determined on the assumption that patents issued to the assignees of John McEnery for **all** the lands described in the petition" (Tr., p. 84), and "the question of lands merely covered by certificates of entry is not before the Court." (Tr., p. 85.)

We will now **correctly** quote the language of the Supreme Court of Louisiana, and then establish, by a mere reference to the petition, the error which it made and which it refused to correct, after its attention was called to it in a petition for a rehearing. (Tr., p. 87.)

In this connection we say that the Supreme Court of Louisiana made another important misstatement of fact, which it, however, corrected in its opinion on rehearing. (Tr., p. 89.)

The Supreme Court of Louisiana (Tr., p. 83), in its opinion says:

> "John McEnery, prior to January 1, 1889, had recovered for the State many thousand acres of land, for which scrip or certificates locatable upon any lands owned by the State was issued to him. These certificates were sold and assigned by John McEnery, and **some** of his assignees located their certificates on the lands described in the petition 'which have not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, for which patents were thereafter ..... issued.' The other assignees, (to quote the language of the petition) 'stood upon their certificates.' It was argued at the bar that some of the lands described in the petition were not covered by patents but by certificates of entry. We have already quoted the allegation that patents issued for such lands. This fact appears also from the following allegations of the petition, to-wit: 'Petitioners aver that in every case, the lands herein described were entered with illegal McEnery scrip or certificates, heretofore set out, and the Patents that were issued therefor refer upon their face to Act No. 23 of 1880 or to the certificate number, which certificate showed upon its face it was issued under Act 23 of 1880.'"

Now, turning to the petition, we find that the very first allegation of fact after the formal statement of the case is (Tr., p. 3):

> "Now, your petitioner avers that the Register of the State Land Office, acting under the provisions of

this illegal and void contract, and without power, right or authority under any law of this State so to do, **issued to the said John McEnery a large number of the certificates,** the issuance of which was provided for only in and by said illegal clause contained in said contract, covering in the aggregate a vast acreage, **which certificates were made locatable upon any** vacant land granted to the State by Acts of Congress, approved March 2, 1849, and September 28th, 1850; that these certificates were sold and assigned by the said John McEnery, **whose assignees located them upon the public lands hereinafter described,** which had not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, **for which patents were thereafter illegally and fraudulently issued to some of said assignees, while** others stood upon their certificates."

Let us put it in the form of the deadly parallel:

QUOTATION AS GIVEN BY SUPREME COURT OF LOUISIANA IN ITS OPINION.	EXACT LANGUAGE OF THE PETITION.
"These certificates were sold and assigned by John McEnery, and some of his assignees located their certificates on the lands described in the petition "which have not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, for which patents were thereafter.....issued."	"That these certificates were sold and assigned by the said John McEnery, whose assignees located them upon the public lands hereinafter described, which had not been recovered by said John McEnery under the contract entered into by and between him and the then Governor of the State, for which patents were thereafter illegally and fraudulently issued TO SOME OF SAID ASSIGNEES, WHILE OTHERS STOOD UPON THEIR CERTIFICATES."

Transcript, page 3.

Comparing this averment of fact with the misquotation by the Supreme Court, we find that the Supreme Court of Louisiana misquoted the allegation of the petition, completing the sentence with the word "issued," affixing quotation marks, and negligently omitted the remaining words of the sentence, to-wit: "to some of said assignees, while others stood upon their certificates."

Thus it changed absolutely the language of the plaintiffs in error and made the petition say the direct opposite to what it did say.

Thus, by omitting the very words of the petition it made it read that patents issued to **all** assignees instead of only to **some** assignees, as alleged.

This establishes beyond cavil the wrongful omission of the vital words of the petition.

The latter part of the paragraph just quoted from the opinion of the Supreme Court reading, "we have already quoted the allegation that patents issued for such lands. This fact appears also from the following allegations of the petition, to-wit: 'Petitioners aver that in every case the lands described were entered with illegal McEnery scrip or certificates, heretofore set out, and the patents **that were issued therefor** refer upon their face to Act No. 23 of 1880, or to the certificate number, which certificate showed upon its face that it was issued under Act 23 of 1880,' " establishes a clear distortion of the words of the petition.

This allegation must be read in connection with the former allegation that patents only issued to **some of the assignees.**

The clear unambiguous meaning, therefore, of this allegation is: **that in every case the lands were entered with McEnery Scrip,** and the patents that were issued therefor (meaning where patents **were** issued, then those patents show on their face, etc.)

The Court has distorted the words "that in every case the lands were entered with McEnery Scrip, and the patents that were issued therefor" to read and mean: "that in every case the lands were entered with McEnery Scrip **and patents were issued therefor.**"

But, if the Court had not already misquoted the averment of the petition, as shown in the first allegation as to the issuance of patents to **some** of the assignees, it could not and would not have misconstrued the second allegation.

There is a further allegation in the petition which again clearly shows this fact. The petition avers as follows:

> "Petitioners aver that the Register of the Land Office refused petitioners' applications and tenders upon the grounds stated in his written refusal made part hereof, to-wit: that said lands had been theretofore entered **or** patented to others." (Tr., p. 13.)

The word "or" which shows clearly that there were two classes of land, those which had been merely entered

and were held under certificates of entry, and those which had been patented. The allegation discloses that the Register of the Land Office knew this fact. If we had intended to aver that all the lands had been patented, we would have said so, or we would have used the word "and": "That said lands had been theretofore entered **and** patented to others." The non-use of the word "and" and the use of the word "or" shows clearly the distinction intended to be drawn, but the positive allegation of the petition, heretofore referred to, establishes beyond contradiction, that the allegation was that patents only issued to some of the assignees of John McEnery, although **all** the assignees of John McEnery had entered the land with his certificates.

This fact is again three times shown in the prayer of the petition. (Tr., p. 16), using the words, "patents or certificates" and deviding the present holders into these two classes.

All the allegations of the petition, and particularly these allegations of fact must be read together.

The allegation is that in **every case** the lands described in the petition were entered with illegal McEnery scrip or certificates, **as heretofore set out** (and it was "heretofore" set out that the assignees of John McEnery entered these lands with his certificates and "patents issued to some of said assignees") and the phrase "and the

patents that were issued therefor'' means that in those cases where patents **were** issued then those patents refer on their face, etc.

The petition never said ''for which patents were thereafter issued ,'' but said: ''For which patents were thereafter * * * issued to **some of said assignees, while others stood upon their certificates.**''

In the petition for a rehearing the attention of the Court was positively called to this misquotation of the language of the petition, but no attention was paid thereto. (Tr., p. 87.)

Such an omission might be attributed to negligence or carlessness, and, perhaps, be excusable, if correction is immediately made, but when the very cause of action of plaintiffs in error may depend on a correct finding of fact, is difficult to excuse the allowance on the part of the Court of a palpable error to go uncorrected when it had the opportunity, as it did have on rehearing, to correct its error and not to deny the plaintiffs in error simply justice.

And we are firm in our belief that this Court will not hesitate to correct such a denial of justice and such a palpable wrong. We are fortified in this belief by the language of this Court in the case of **Barton W. Kuhn vs. The Fairmont Coal Company of West Virginia**, not yet reported.

Futher argument on this branch of the case is unnecessary.

From the opinion of the Court of Louisiana, it is clear that if that Court had not misstated and misquoted the averments of the petition in making its finding that the petition did not cover or embrace lands held under certificates conceded to be null and vaid, the Court would have maintained the cause of action.

The Supreme Court of Louisiana holds that the issuance of certificates to John McEnery made upon their face **"locatable upon any vacant lands of the State,"** were absolutely null and void; also that the Legislature, Act 86 of 1906, had declared that certificates of entry which on their face purport to have been paid for with such illegal McEnery certificates were likewise absolutely null and void.

The reason why the Legislature made this declaration is apparent from a perusal of Sec. 5, of Act No. 75 of 1880, (see appendix), the Act in force at date of entry of these lands with McEnery Certificates—because that section prohibited the entry of lands except upon payment of money actually covered into the State Treasury and makes the issuance of certificates of entry, except for cash a crime.

This section reads as follows: "Sec. 5. Be it further enacted, etc, That the Register of the State Land Office shall, on the sale of lands or warrants, describe the same

in his order on the Treasurer of the State to receive the money for said lands, and in no case shall an entry be made upon the books, maps or other official record until the receipt of the Treasurer, also describing the land or warrant, has been submitted and filed in his office; a violation of this section shall be deemed a felony, and upon conviction the party offending shall pay a fine of five thousand dollars and be imprisoned for a term not exceeding ten nor less than two years, etc. etc."

In explanation of the statment in the opinion of the Supreme Court of Louisiana to the effect that the word "certificate" in the petition is used as synonymous with "script," we have to say that an examination of a "McEnery Certificate" issued by the Register of the Land Office will show that when it was "located" an endorsement or certificate of entry was made on the back or reverse.

Therefore, in fact, the original McEnery certificates became certificates of entry and were one and the same thing. That is why the petition uses the word certificates in a double sense as "McEnery Certificates" and as "Certificates of Entry," it being easily determinable which is meant by the context.

The Court erred when it held, citing the jurisprudence of this Court as its authority, that "a patent (hence a patent null and void on its face) vests the legal title in the patentee and segregates the land from the public domain.

The petition charges that the patents that were issued to some of the assignees of John McEnery were null and void on their face—and did not segregate the land from the public domain.

We take it that the decisions of this Court announced the settled jurisprudence that a patent null and void on its face does not segregate the land from the public domain and may be treated as a nullity and attacked collaterally.

Act 85 of 1906, has recognized the nullity, on their face, of these patents, as Act 86 of 1906 has recognized the invalidity on their face of the certificates of entry. These Acts read as follows:

"Act No. 85.

"By Mr. Toomer. House Bill No. 223.

"An Act declaring that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees or transferees, shall be confirmed as applicants for said lands, from the date of the issuance or said patents, where the said patents were not paid for in money, but were paid for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees of said patents to validate and perfect their title to the lands cov-

ered by said patents, or to any part or subdivision of such lands, within one year from the date of passage of this act, by paying therefor in cash the price of $1.50 per acre.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That, where the State of Louisiana has issued, for its lands, patents signed by the Governor of the State and by the Register of the Land Office, and purporting on their face to have been paid for by certificates or warrants of given numbers, and where the certificates or warrants so referred to as having been given in payment for the patents are, in fact, certificates or warrants for scrip, which scrip for any reason was not legally receivable in payment for such patents, in such cases the present holders and owners of the patents, their heirs, assignees or transferees, shall be confirmed as applicants in the Land Office for the lands covered by such patents, or for any part or subdivision of such lands, from the date on which said patents were issued, and shall be entitled to perfect and validate their titles to the lands covered by their patents, or to any part or subdivision of such lands, within one year from date of passage of this act, by paying in cash to the State the price of $1.50 per acre; said payments shall be made in the names of the original patentees, and the Register of the State Land Office is hereby directed to issue the proper orders to the State Treasurer, who shall issue receipts for said payments; and, on making said payments, the said patents shall be valid and legal for

all purposes, as if payment therefor had been made in cash at the date of their issuance.

"J. Y. HYAMS,
"Speaker of the House of Representatives.
"J. Y. SANDERS,
"Lieutenant Governor and President of the Senate.

"Aproved July 7, 1906.

"NEWTON C. BLANCHARD,
"Governor of the State of Louisiana.

"A true copy:

"JOHN T. MICHEL,
"Secretary of State."

"Act No. 86.

"House Bill No. 224.

"An Act declaring that present holders and owners of certificates of entry for public lands issued by the State of Louisiana, their heirs, assignees or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said certificates of entry, where the said certificates of entry were not paid for in money, but were paid for by certificates or warrants for scrip which were not legally receivable in payment for such certificates of entry, and authorizing such present holders and owners of said certificates of entry, their heirs, assignees or transferees, to validate and perfect their titles to the lands covered by the said certificates of

entry, or to any part or subdivision of such lands, within one year from date of passage of this act, by paying therefor in cash the price of $1.50 per acre.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That, where the State of Louisiana has issued for its lands certificates of entry, signed by the Register of the State Land Office, and purporting on their face to have been paid for by certificates or warrants of given numbers, and where the certificates or warrants so referred to as having been given in payment for the certificates of entry are, in fact, certificates or warrants for scrip, which scrip for any reason was not legally receivable in payment for such certificates of entry, in such cases the present holders and owners of the certificates of entry, their heirs, assigns or transferees, shall be confirmed as applicants in the State Land Office for the lands covered by such certificates of entry, or for any part or subdivision of such lands, from the date on which said certificates of entry were issued, and shall be entitled to perfect and validate their titles to the lands covered by their certificates of entry within one year from date of passage of this act by paying in cash to the State the price of $1.50 per acre; said payments shall be made in the names of the original entrymen, and the Register of the State Land Office is hereby directed to issue proper orders to the State Treasurer, who shall issue receipts for said payments; and on making said payments, the said certificates of entry shall be valid and legal for all purposes, as if payment therefor had

been made in cash at the date of their issuance; and the Governor and the Register of the State Land Office are hereby directed to issue patents therefor in the original entrymen.

"J. Y. HYAMS,

"Speaker of the House of Representatives.

"J. Y. SANDERS,

"Lieutenant Governor and President of the Senate.

"Approved July 6, 1906.

"NEWTON C. BLANCHARD,

"Governor of the State of Louisiana.

"A true copy:

"JOHN T. MICHEL,

"Secretary of State."

The petition avers that all of the patents that were issued refer on their face to Act 23 of 1880, or to the certificate No. .... which certificate showed on its face that it was issued under Act 23 of 1880, but made **"locatable upon any vacant lands of the State."**

We take it, therefore, that the patents show **on their face** that they were purchased with illegal McEnery certificates now declared illegal by Act 86 of 1906, and by the present decision in this case; and further that the issuance of such patents for anything else than money was in defiance of a prohibitory law, Sec. 5, Act 75 of 1880, making it a crime to so issue a patent.

We conclude that these allegations and this evidence shows the absolute nullity on their face of the patents in question—but the Supreme Court of Louisiana announces on its authority that "a patent under the great seal of the State" (hence **all** patents, whether null and void on their face or not) segregates the land from the public domain, so as to preclude a valid entry or application to enter.

They refer for authority to: **In re Emblen, 161 U. S. 52; Emblem vs. Lincoln Land Co., 184 U. S. 660; Smith vs. Crandell 118 La. 1052; U. S. vs. Thockmorton, 98 U. S. 70.**

Refering to the case of **In re Emblen, 161 U. S. 52,** we are constrained to say, in our respectful opinion, it has no application to the case at bar. This Court said:

> "This is an application for mandamus to compel the Secretary of the Interior to review his acts, and to draw into the jurisdiction of the Court matters which are within the exclusive cognizance of the land department."

An Act of Congress had, pending a contest, granted one of the parties, who had continuously won his case, a patent. This Court did not pass upon the alleged unconstitutionality of the Act of Congress and declined jurisdiction.

The Court did say:

> "The patent conveys the legal title to the patentees, and cannot be revoked or set aside except

upon judicial proceedings instituted in behalf of the United States."

By no streteh of imagination could this decision be fairly said to hold that a patent null and void on its face segregates the land from the public land.

Emblen vs. Lincoln Land Co., 184 U. S. 660.

In this case again we find no certificate of entry, or patents, or **entries** null and void on their face.

This Court held in that case that the Weed entry had not been cancelled, when Emblem wished to make his entry.

This is the same case as **In re Emblen, 161 U. S. 52,** and it appears that all Emblen ever did was (quoting) "to file a protest in that (Land) office against the issue of a patent to Weed for the land in question alleging, fraud, misrepresentation and perjury on Weed's part, touching his settlement, occupation, and purpose, and demanding a hearing and asking to be allowed the rights of a **contestant** under Act of May 14, 1880, Chap., 89, 21 Stat. at L. 140."

It is manifest from this finding of the Supreme Court that Weeds entry **on its face** was legal and that Emblen intended to show by facts **dehors** the record and upon a trial on the merits, matters antedating the entry which facts would justify its cancellation.

We observe the further finding of this Court in the last paragraph (184 U. S. 664) to be: "as Emblen never made an entry on the land, **nor perfected a right to do so**, it results that he had no vested right or interest which could defeat the operation of the Act 1894."

We respectfully urge that this case has no application to the case at bar and does not sustain the proposition of the Supreme Court of Louisiana that a patent (null and void on its face) segregates the land from the public domain.

This case of **Emblen vs. Lincoln Land Company** is somewhat like the case of **Smith vs. Crandell,** also cited, **118 La. 1052.**

In that case, the plaintiffs made no averment that the patents that had issued for the lands were "null and void on their face."

The case, however, has no bearing on the case at bar, because the Supreme Court held (quoting):

> "We do not consider it necessary to pass upon the question of the validity of **patents** granted upon warrants known as 'McEnery Scrip' located upon lands owned by the State **not actually recovered** by John McEnery. Suffice it to say that plaintiffs are without standing to maintain an action to annul such patents."
>
> **Smith vs Crandall, 118 La. An. 1055.**

Thus, the sole point involved in the case at bar was left open by the Court, because the allegation of the petition shows that the McEnery certificates and the patents purchased therewith are null and void on their face and cover lands **not actually** recovered by John McEnery under his contract.

We are unable to see any application in the reference to **U. S. vs. Thockmorton, 98 U. S., 70.**

We thus dispose of every case cited by the Supreme Court of Louisiana to sustain its declaration that it is the jurisprudence of the United States, that a patent null and void on its face segregates the land from the public domain.

We now briefly refer to the decisions of this Court which point blank announce the contrary.

We quote from **St. Louis Smelting Co. vs. Kemp, 104 U. S. 645** (26 Law Ed. 878), viz.:

> "Upon the general doctrine, the Court observed, speaking through Chief Justice Marshall, that the laws for the sale of the public lands provided many guards to secure the regularity of grants and to protect the incipient rights of individuals and of the State from imposition; that officers were appointed to superintend the business, and rules had been framed prescribing their duty; that these rules were, in general, directory, and, when all the proceedings were completed by a patent issued by the authority of the State, a compliance with those rules was pre-

supposed, and that 'every prerequisite has been performed, is an inference properly deducible, and which every man has a right to draw from the existence of the grant itself.' 'It would, therefore, be extremely unreasonable,' said the Court, 'to avoid the grant in any court for irregularities in the conduct of those who are appointed by the Government to supervise the progressive course of the title from its commencement to its consummation in a patent'; but that there were some things so essential to the validity of a contract that the great principles of justice and of law would be violated did there not exist some tribunal to which an injured party might appeal, and in which the means by which the elder title was acquired might be examined, and that a court of equity was a tribunal better adapted to this object than a court of law; and it added that 'there are cases in which a grant is absolutely void; as where the State has no title to the thing granted, **or where the officer had no authority to issue the grant.** In such cases, the validity of the grant is, necessarily, examiable at law.' So the Court held that proof that no entry had been made in the office of the entry-taker in the county where the lands patented were situated prior to the cession to the United States, was admissible under the ninth section, for, without such entry, they would not be within the reservation mentioned in the act of cession. In other words, proof was admissible to show that the State had not retained control over the property, but had conveyed it to the United States." (Black-letter ours.)

"In **Patterson vs. Winn**, reported in 11 Wheaton, 380, this case is cited, and after stating what it

decided, the Court said: 'We may, therefore, assume as the settled doctrine of this Court that, **if a patent is absolutely void upon its face, or the issuing thereof was without authority, or was prohibited by statute,** or the State had no title, it could be impeached collaterally in a court of law in an action of ejectment; but, in general, other objections and defects complained of must be put in issue in a regular course of pleading in a direct proceeding to avoid the patent.' (Black-letter ours.)

"The doctrine declared in these cases as to the presumptions attending a patent has been uniformly followed by this Court. The exceptions mentioned have also been regarded as sound, although, from the general language used, some of them may require explanation to understand fully their import. If the patent, according to the doctrine, be absolutely void on its face, it may be collaterally impeached in a court of law. It is seldom, however, that the recitals of a patent will nullify its granting clause, as, for instance, that the land which it purports to convey is reserved from sale. Of course, if such inconsistency appear, the grant would fail. Something more, however, than an apparent contradiction in its terms is meant when we speak of a patent being void on its face. **It is meant that the patent is seen to be invalid, either when read in the light of existing law or by reason of what the Court must take judicial notice of;** as, for instance, that the land is reserved by statute from sale, or otherwise appropriated, or that the patent is for an unauthorized amount, or is executed by officers who are not instructed by law with the power to issue grants of

portions of the public domain. (Black-letter ours.)

"So, also, according to the doctrine in the cases cited, if the patent be issued without authority, it may be collaterally impeached in a court of law. This exception is subject to the qualification that, when the authority depends upon the existence of particular facts or upon the performance of certain antecedent acts, and it is the duty of the Land Department to ascertain whether the facts exist or the acts have been performed, its determination is as conclusive of the existence of the authority against any collateral attack as is its determination upon any other matter properly submitted to its decision."

So, in the case at bar, Act 23 of 1880, only allowed payment to be made out of the lands recovered. This was tantamount to a withdrawal of all other State lands from the operation of Act 23 of 1880, and acted as a prohibitory statute preventing the payment to the attorney employed from being made out of any other lands owned by the State than those actually recovered. This principle is also confirmed by:

Doolan vs. Carr, 125 U. S. 625 (31 Law Ed. 847), the Supreme Court of the United States said (quoting):

"There is no question as to the principle that, where the officers of the Government have issued a patent in due form of law, which on its face is sufficient to convey the title to the land described in it, such patent is to be treated as valid in actions at law, as distinguished from suits in equity, subject, however, at all times to the inquiry whether such officers

had the lawful authority to make a conveyance of the title. But, if those officers acted without authority, if the land which they purported to convey had never been within their control, or had been withdrawn from that control at the time they undertook to exercise such authority, then their act was void—void for want of power in them to act on the subject-matter of the patent; not merely voidable—in which latter case, if the circumstances justified such a decree, a direct proceeding, with proper averments and evidence, would be required to establish that it was voidable, and should, therefore, be avoided. The distinction is a manifest one, although the circumstances that enter into it are not always easily defined. It is, nevertheless, a clear distinction, established by law, and it has been often asserted in this Court that even a patent from the Government of the United States, issued with all the forms of law, may be shown to be void by extrinsic evidence, if it be such evidence as by its nature is capable of showing a want of authority for its issue.

"The decisions of this Court on this subject are so full and decisive that a reference to a few of them is all that is necessary."

In the case of **Burfenning vs. Chicago, St. P., M. & O. R. Co., 163 U. S. 319** (41 Law Ed. 176, the Supreme Court has this to say (quoting):

"It has undoubtedly been affirmed over and over again that, in the administration of the public land system of the United States, questions of fact are for the consideration and judgment of the Land De-

partment, and that its judgment thereon is final. Whether, for instance, a certain tract is swamp-land or not, saline land or not, mineral land or not, presents a question of fact not resting on record, dependent on oral testimony; and it cannot be doubted that the decision of the Land Department, one way or the other, in reference to these questions, is conclusive and not open to litigation in the courts, except in those cases of fraud, etc., which permit any determination to be re-examined. **(Johnson vs. Tousley, 80 U. S. 13, Wall. 72 [20:485]; St. Louis Smelt & Ref. Co. vs. Kemp, 104 U. S. 636 [26 :875]; Steel vs. St. Louis Smelt. & Ref. Co., 106 U. S. 447 [27:226); Wright vs. Roseberry, 121 U. S. 488 [30:-1039]; Heath vs. Wallace, 138 U. S. 573 [34:1064; McCormick vs. Hayes, 159 U. S. 332 [40:171.])**

"But it is also equally true that when, by Act of Congress, a tract of land has been reserved from homestead and pre-emption, or dedicated to any special purpose, proceedings in the Land Department cannot override the expressed will of Congress, or convey away public lands in disregard or defiance thereof. **(St. Louis Smelt. & Ref. Co. vs. Kemp, 104 U. S. 636, 646 [26:875, 879]; Wright vs. Roseberry, 121 U. S. 488, 519 [30:1039, 1048]; Doolan vs. Carr, 125 U. S. 618 [31:844]; Davis vs. Wiebold, 139 U. S. 507, 529 (35:238, 246]; Knight vs. United Land Assn., 142 U. S. 161 [35:974.])"**

~~Therefore, all those lands, to say the least, that are alleged in the petition (Tr., pp. 4 and 5) to be held under these certificates (no patent ever having been issued) must be conceded to have remained public lands.~~

Then, the final question is: The lands being public lands, did Frellsen & Company, availing itself of the invitation of the State to purchase its vacant lands, acquire any vested right to these lands under its admitted formal applications and tenders of the purchase price?

These applications and tenders were made on March 28, 1905 (Tr., p. 5), before the passage of Acts 85 and 86 of 1906.

This point, we believe, has been definitely decided by the Supreme Court of the United States in the case of **Pennoyer vs. McConnaughy, reported in 140 U. S. 1** (35 L. Ed. 365.)

In that case, one Owen made application, under the Oregon Act of 1870, for the purchase of some lands, including the lands in controversy. On the 23rd of November, 1881, and on the 3rd of April, 1884, within ninety days after date of the public notice of the completion of the maps and description of the land provided for in the second section of the act, he paid to the Board of Commissioners, as required by the third section, the twenty per centum of over forty-three thousand acres of land. Owen sold these lands to one Felton, who sold them to the plaintiff, Pennoyer, for the sum of $30,000, the latter also assuming to pay to the State the remainder of the purchase price when it became due.

After Owen made his application to purchase, as above mentioned, but before he made the first payment, to-wit:

October 18, 1878—the Legislature passed an act which went into effect January 17, 1879 (ninety days after date, as provided by the Constitution of the State), expressly repealing the aforesaid Act of 1870, and making entirely new regulations for the disposition and sale of the swamp lands belonging to the State. On February 16, 1887, the Legislature passed an act declaring that all certificates of sale (being the receipts provided for in the third section of Act of 1870), arising from the sale of swamp or overflowed lands, on which the twenty per centum of the purchase price was not paid prior to January 17, 1879, were void and of no effect or force whatever.

Acting under the provision of this statute of 1887, the Board of Commissioners canceled the certificates of sale to Owen, because the twenty per centum of the purchase price of the land had not been paid prior to January 17, 1879, and said Board of Commissioners sold some of the lands to other parties.

Pennoyer brought a suit to enjoin the said Board from selling said lands. In deciding the case, the Supreme Court said as follows (quoting):

> "The position of the complainant below is that, as the swamp lands of the State were for sale upon the terms and conditions mentioned in the Act of 1870, a valid contract, binding upon both parties to it, was completed between the State and the applicant the moment a legal application to purchase was filed with the proper officer of the State and accepted by him. This was the view taken by the Circuit Court.

"We quote from the opinion of Judge Deady as follows: 'The transaction, as set forth in the statute, has all the elements of a contract of sale. The statute is a formal standing offer by the State of these lands for sale, on the terms therein mentioned, and an invitation to all the qualified citizens of the United States to become purchasers thereof by filing on application for some specific tract thereof with the board, and complying with the subsequent conditions of payment and reclamation. The application is a written acceptance of the offer of the State, in relation to the land described therein, and, on the filing of the same, the minds of the seller and the purchaser—the State and the applicant—came together on the proposition, and thenceforth there was an agreement between them for the sale and purchase of that parcel of land, binding on each of them until released therefrom by some substantial default of the other, not overlooked or excused.' (43 Fed. Rep. 202.)"

"**We think this view very forcible, and it would be conclusive to our minds but for the consideration which suggests itself, that the bare application itself, unaccompanied by the payment of any consideration** partakes somewhat of the nature of a pre-emption claim under the laws of the United States with reference to which it has been held that the occupancy and improvement of the land by the settler, and the filing of the declaratory statement of such fact, confers no vested right upon him as against the Government of the United States, until all the preliminary acts prescribed by law, including the

payment of the price, are complied with. **Yosemite Valley Case, 82 U. S., 15 Wall. 77 (21:82); Frisbie vs. Whitney, 76 U. S., 9 Wall. 187 (19:668.)**" (Black-letter ours.)

"But we do not deem it necessary to determine whether the Court was correct in that view of the case, for, in our opinion, another element of the case is of sufficient importance to control its disposition. Even if no vested right accrued to the applicant immediately upon the filing of his application and its acceptance by the authorities of the State, **it is conceded on all hands that he acquired such right upon the payment of the twenty per centum of the puchase price** of the lands embraced in his application, if such payment was made in accordance with law." (Black-letter ours.)

The Supreme Court, in concluding its consideration of the question of whether or not Pennoyer had acquired a vested right, used these words (quoting):

"In other words, by such payment, this contract with the State became so far executed as to be embraced in the class of contracts protected by Sec. 10 of Art. 1 of the Constitution of the United States, which declares that ' no State shall pass any law impairing the obligation of contracts.'

"Does the statute of 1887, above quoted, impair such contract? We think it does, beyond all doubt. It, in so many words, authroizes the Board of Commissioners to cancel the certificates of sale where the twenty per centum of the purchase price of the land had not been paid prior to January 17, 1879,

and treats the land embraced in such certificates as reverted to the State. That legislation surely impaired the obligation of the contract, Owen had with the State, for its effect was to destroy valuable property rights and privileges belonging to him. It was, therefore, violative of the Constitution of the United States. (Art. 1, Sec. 10.)"

An analysis of our case and the **Pennoyer case will** show that in principle they are absolutely similar. It is true, the **Pennoyer case** is decided upon the finding that Pennoyer had paid the twenty per centum of the purchase price within the condition of the Act of 1870; but this finding of fact was based upon the argument expressed in the following words (quoting):

> "This reasoning leads logically to the conclusion that the ninth section of the Act of 1878 was not intended to render void applications to purchase in which every condition of the **Act of 1870 had been complied with so far as lay in the power of the applicant**, and where the failure to make the payments specified was caused solely by the failure of the other contracting party." (Black-letter ours.)

Our contention is that, under Section 10 of Act 125 of 1902, the State of Louisiana offered for sale the swamp and overflowed lands described in our petition at the purchase price of $1.50 per acre.

That (it being conceded that the lands held under certificates issued to John McEnery, which certificates showed on their face that they were issued in payment to him under Act 23 of 1880 and his contract, and were

made locatable upon any vacant lands of the State of Louisiana, were absolutely null and void, and did not segregate the lands from the public lands of the State) Frellsen and Company acquired a vested right by accepting in writing the offer of the State of Louisiana to sell these lands, and by tendering the purchase price of same to the proper officers, as averred in the petition.

We contend that Frellsen & Company, in the language of the Supreme Court in the **Pennoyer case**, complied with the law in so far as it lay in the power of Frellsen & Company, and that the wrongful action of the Register of the Land Office, the State Auditor and the State Treasurer in refusing to accept the purchase price of the land applied for cannot affect the question of Frellsen & Company's vested right.

This brief presents a discussion of our side of the case, free from any arguments that may be made by opposing counsel, and we will attempt, in a reply to such brief as they may write, to maintain the position herein assumed, and to answer any arguments or authorities that they may supply to the contrary, or to answer any original propositions of law going to the defeat of our application, drawn from the opinion and decree of the Supreme Court of Louisiana.

Respectfully submitted,

H. G. MORGAN,,
P. M. MILNER,
Attorneys for Plaintiffs in Error.

APPENDIX.

"No. 75.

"AN ACT

"Entitled an act to readjust the State Land Office; appointment of a register; to fix his salary and the time and manner of paying said salary; to define the powers and prescribe the duties of the register; to fix the fees for certificates and patents, and disposition thereof; the price of lands and disposition of the proceeds; duties of the Auditor of Public Accounts, State Treasurer, Attorney General and the Governor; to provide for the payment of salary and expenses incurred in the State Land Office; to repeal all conflicting laws.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there shall be established, under the provisions of this act, an office for the sale of public lands donated to the State by Congress, which office shall be administered by a register; said office to be located at the seat of government of the State of Louisiana.

"Sec. 2. Be it further enacted, etc., That the Governor, by and with the consent of the Senate, shall appoint, under the provisions of this act, a register, who shall hold his office for the term of four years, whose salary shall be fifteen hundred dollars, in full compensation for his services as register, payable

quarterly by the Treasurer of the State, on the warrant of the Auditor of Public Accounts, said salary to be paid out of swamp land fund only. He shall take the oath prescribed by the Constitution and laws, and give bond in favor of and to be approved by the Governor of Louisiana, with one or more good and sufficient sureties, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, which bond so approved shall be filed by the register in the office of the Secretary of State.

"Sec. 3. Be it further enacted, etc., That it shall be the duty of the register to keep accounts of the sales of lands donated to the State, in well-bound books, with the number of the certificate issued therefor, setting forth the section, parts of sections, township and range, district and parish, to whom and when sold, and for what price, and shall cause to be marked on the official plats or maps on file in his office the number of certificate, which books and maps shall be preserved as official records. It shall be the duty of the said register to furnish annually to the Auditor of Public Accounts, on or before the twentieth day of December of each year, a descriptive list, by parish, of all lands sold during the preceding year, together with all data that may be afforded by his records.

"Sec. 4. Be it further enacted, etc., That all money arising from the sale of warrants or public land shall be paid by the purchaser to the State Treasurer, on the warrant of the Auditor of Public Accounts, whose duty it shall be to warrant at once

on the Treasurer of the State to receive said money within forty-eight hours after the issuance of the same by the Auditor.

"Sec. 5. Be it further enacted, etc., That the Register of the State Land Office shall, on the sale of lands or warrants, describe the same in his order on the Treasurer of the State to receive the money for said lands, and in no case shall an entry be made upon the books, maps or other official record until the receipt of the Treasurer, also describing the land or warrants, has been submitted and filed in his office; a violation of this section shall be deemed a felony, and upon conviction the jarty offending shall pay a fine of five thousand dollars and be imprisoned for a term not exceeding ten nor less than two years. It shall be the duty of the Auditor of Public Accounts to transmit, within forty days after the expiration of each fiscal year, the report of the register, mentioned in section three of this act, to the assessor of the parish wherein the lands may be situated, in order that they may be assessed for taxes.

"Sec. 6. Be it further enacted, etc., That the register shall collect from parties purchasing lands the sum of twenty-five cents for each certificate of forty acres, the sum of fifty cents for each certificate of eighty acres, the sum of one dollar for each certificate of one hundred and sixty acres, and the sum of two dollars for each certificate of three hundred and twenty acres, and the sum of four dollars for each certificate of six hundred and forty acres, whenever such certificates are issued by him;

and he shall charge and collect the sum of two dollars for each patent prepared by him and signed by the Governor; and that the fees charged and collected by the said register, under this act, shall be received by him for the use and benefit of the State, and shall be paid quarterly by the said register to the Treasurer, who shall credit the appropriate land fund of the State with the same.

"Sec. 7. Be it further enacted, etc., That the Treasurer, as receiver of the State Land Office, from and after the promulgation of this act, shall deliver to the purchaser or his agent, a receipt which shall contain a correct description, by section, township and range, of the lands sold by the State, for which said Treasurer shall receive no extra compensation.

"Sec. 8. Be it further enacted, etc., That persons holding legally issued outstanding unlocated school, internal improvement or other State land warrants, or who have heretofore entered, located or purchased, or who may hereafter locate or purchase school or internal improvement warrants of the State of Louisiana, legally issued, and where the location, entry or purchase has been rejected by the United States, on land belonging to the general government, he or they shall have a right hereafter to locate said warrant on any lands belonging to the State.

"Sec. 9. Be it further enacted, etc., That the Attorney General of the State of Louisiana shall give his opinion and counsel to the said register, whenever requested, in any matter pertaining to the duties or business of the said register's office.

"Sec. 10. Be it further enacted, etc., That the

public lands donated by Congress to the State of Louisiana, shall be subject to entry and sale, at the rate of seventy-five cents per acre, for any number of acres; and any person making affidavit that he or she enters for his or her own use, and for the purpose of actual settlement and cultivation, and together with the said entry, he or she has not acquired from the State of Louisiana, under the provisions of this or any act graduating State land, more than one hundred and sixty acres, according to the established surveys, shall be allowed to enter one hundred and sixty acres at the rate of twelve and one-half cents per acre.

"Sec. 11. Be it further enacted, etc., That the public lands donated by Congress to the State of Louisiana, designated as sea marsh or prairie, subject to tidal overflow, so as to render them unfit for settlement and cultivation, shall be subject to entry and sale at the rate of twelve and a half cents per acre; **provided**, that satisfactory proof of said fact be filed with the Register of the State Land Office.

"Sec. 12. Be it further enacted, etc., That the Register of the State Land Office shall be authorized, and it shall be his duty to administer any oath or oaths which may be required by law in connection with the duties of his office.

"Sec. 13. Be it further enacted, etc., That all salaries and expenses incurred under the provisions of this act shall be paid by the Treasurer of the State of Louisiana, on the warrant of the Auditor of Public Accounts, out of the swamp land fund, and no other.

"Sec. 15. Be it further enacted, etc., That all be the duty of the Governor when applied to, to issue

patents for all lands sold, on presentation of the Treasurer's receipt and for lands located by warrants, whenever he shall be satisfied that the same have been legally sold and located.

"Sec. 15. Bet it further enacted, etc., That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed, and that this act shall take effect from and after its promulgation.

(Signed) "R. N. OGDEN,
"Speaker of the House of Representatives.
(Signed) "S. D. McENERY,
"Lieutenant Governor and President of the Senate.

"Approved April 7, 1880.
(Signed) "LOUIS A. WILTZ,
"Governor of the State of Louisiana.

"A true copy:
"WILL A. STRONG,
"Secretary of State."

"Act No. 125. Senate Bill No. 79.

"AN ACT

"To amend and re-enact Sections Ten and Eleven of Act No. 75 of 1880, entitled An Act (Sic) readjust the State Land Office, appointment of a register; to fix his salary and the time and manner of paying said salary; to define the powers and prescribe the duties of the Register; to fix the fees for certificates and patents, and disposition thereof; the price of lands and disposition of the proceeds; duties of the Auditor of Public Accounts,

State Treasurer, Attorney General and the Governor; to provide for the payment of salary and expenses incurred in the State Land Office; to repeal all conflicting laws as amended and re-enacted by Act 195 of 1898.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That Section ten and eleven (10) and (11) of Act No. 75 of 1880, approved April 7, 1880, as amended and re-enacted by Act 195 of 1898, be and the same are amended and re-enacted so as to read as follows:

"Sec. 10. Be it further enacted, etc., That the public lands donated by Congress to the State of Louisiana, known as swamp and overflowed lands, shall be subject to entry and sale at the rate of one dollar and fifty cents per acre; for any number of acres; and any person making affidavit that he or she enters for his or her own use, and for the purpose of actual residence, settlement and cultivation, and that, together with said entry, he or she has not acquired from the State of Louisiana under the provisions of this or any act graduating State lands, or under the homestead laws of the State, more than one hundred and sixty (160) acres, according to the established surveys, shall be allowed to enter one hundred and sixty acres at the rate of fifty (50) cents per acre, provided that proof of actual settlement, residence and cultivation shall be made at the State Land Office in twelve months after the entry shall have been made; provided that no failing to make such proof within said time, said entry shall

be canceled and provided further, that any person who is a citizen of the State of Louisiana, who owns now and resides upon, or who may hereafter acquire and reside upon a track of land in the State of Louisiana containing less than one hundred and sixty acres, may purchase or enter for the benefit of an adjoining farm at the rate of fifty cents per acre, in addition to such fees as are now allowed by law, a sufficient quality (sic) of swamp and overflowed lands, suitable for cultivation, which will increase to one hundred and sixty acres, or to any quantity less than one hundred and sixty acres, his farm areas, provided that the land so owned and which is sought to be increased to one hundred and sixty acres, or a less quantity, is used **bona fide** for actual residence, settlement and cultivation, and provided further, that the applicant for such increase shall establish to the satisfaction of the Register of the State Land Office that his or her purpose in seeking such increase is with the honest and **bona fide** intention to enlarge his or her farm area; provided, further, that the land so purchased, or entered, shall be contiguous to the tract owned at the time of making such entry; and provided further, that no person who has acquired under the provisions of any act graduating State lands, or under the State homestead laws, a quantity of land equal to one hundred and sixty (160) acres, shall be permitted to take the benefit of this act; and provided further, that proof of cultivation and improvement shall be made at the State Land Office within twelve months from said entry, and on failing to make such proof within said time, said entry shall be cancelled.

"Sec. 11. Be it further enacted, etc., That the public lands donated by Congress to the State of Louisiana, designated as sea marsh, or prairie, and subject to tidal overflow, so as to render them unfit for actual residence, settlement and cultivation, shall be subject to entry and sale at the rate of twenty-five (25) cents per acre; provided that satisfactory proof of said facts be filed with the Register of the State Land Office.

"Sec. 2. Be it further enacted, etc., That the provisions of this act shall not apply to swamp, overflow and sea-marsh lands, which at the time of the passage of this act, were subject to entry and sale as having been approved to the State, and where same had been already applied for according to law; but, in all cases, where such applications for the sale or entry of said lands have been made, such land shall be disposed of at the prices fixed by Sections ten and eleven of Act No. 75 of 1880, as amended by Act No. 195 of 1898.

"Sec. 3. Be it further enacted, etc., That all laws and parts of laws in conflict or inconsistent with this act be and the same are hereby repealed.

(Signed) "J. Y. SANDERS,
"Speaker of the House of Representatives.

(Signed) "ALBERT ESTOPINAL,
"Lieutenant Governor and President of the Senate.

"Approved: July 8th, A. D. 1902.
"W. W. HEARD,
"Governor of the State of Louisiana.

"A true copy:
"JOHN T. MICHEL,
"Secretary of State."

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 129.

J. W. FRELLSEN & COMPANY, PLAINTIFFS IN ERROR,

vs.

J. W. CRANDALL, REGISTER OF THE STATE LAND OFFICE, ET AL.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

H. G. MORGAN,
P. M. MILNER,
Attorneys for Plaintiffs in Error.

(21,112.)

SUPREME COURT OF THE UNITED STATES.

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No. 129.

J. W. FRELLSEN & COMPANY, PLAINTIFFS IN ERROR,

vs.

J. W. CRANDALL, REGISTER OF THE STATE LAND OFFICE, ET AL.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

If the court please:

With the court's kind permission we beg the liberty of adding a word to our argument.

We submit that the question of our vested right does not depend on anything to be done or not to be done by the Register of the Land Office. Our vested right can only exist or come into existence by what we did, without regard to what action, if any, the Register took.

Rights are vested as distinguished from expectant or contingent. A right is said to be contingent when it depends on an uncertain event; expectant, as, for example, when it depends upon a continuance of existing laws. An example is shown by the law of forced heirship under Louisiana law.

As our right was neither contingent nor expectant, it must be held to be vested.

The enquiry must be directed, not, as argued by counsel for defendants in error, to our remedy, as conveyed in the question, "What could you do the moment after your tender was refused?" but to the proposition, What, if anything, was there remaining for us to do in order to get our vested right? The legal status is fixed by our applications and our tenders, the latter being tantamount in law to payment.

Our application is to determine our vested right to a patent. That is all we claim. We have claimed nothing else, and acts 85 and 86 of 1906 would prevent our securing these patents. Same relief asked in Pennoyer *vs.* McConnaughy, 140 U. S., 1.

Referring to question of Justice Lurton as to whether the decision of the Louisiana court was not placed upon the statement of a general rule of law applicable to Louisiana, as well as to the United States, we respectfully answer that this court has repeatedly held that while it will respect the settled jurisprudence of a State, yet it will not accept the *decision in the case* as settling the State's jurisprudence when there are no former decisions antedating the period of time involved in the instant case.

In other words, it is not pretended that prior to March 28, 1905, the Supreme Court of Louisiana had ever announced the doctrine that a patent once issued segregates the land.

In Smith *vs.* Crandall, referred to, decided in *1907*, subsequent to our applications and tenders, the proposition was stated as in the instant case. But both of these decisions are subsequent to our applications, tenders and the acquisition of our vested rights. It is only where the law has been settled by prior decisions that the doctrine of accepting the State court's exposition of it is binding.

Respectfully submitted.

H. G. MORGAN,
P. M. MILNER,
Attorneys for Plaintiffs in Error.

Supreme Court of the United States.

October Term, 1909.

No. 129.

J. W. FRELLSEN & COMPANY,
A Partnership Composed of Joseph W. Frellsen and James D. Hill, Plaintiffs in Error.

VERSUS

A. W. CRANDELL,
Register of the State Land Office and Others.

Reply to Brief of Defendants in Error.

We are somewhat surprised at the array of counsel on the brief of the Attorney-General, who is representing the defendants in error (not the intervenors in the case).

A reference to the transcript shows that the counsel whose names appear on the brief are the attorneys for the several intervenors.

This fact, taken together with the memorandum at

page 43 of the brief, to the effect that "Point VI, is urged on behalf of intervenors solely and is not "concurred" in "by Counsel for the State of Louisiana," justifies the conclusion that the brief is really and in fact intervenors' brief (although the intervenors are not before the Court) else the language is inappropriate, for the brief could hardly be the Attorney-General's, if he did not "concur" (?) in every part of it.

There is also a glaring unintentional inaccuracy in the little memorandum. The Attorney-General is **not** the "Counsel for the State of Louisiana" but the counsel or attorney for A. W. Crandell, Register of the Land Office, and others, for this is not a suit against the State.

We are not so much concerned with who wrote the brief as we are with what it says.

We will, therefore, examine the six (6) points made in support of the judgment of the Louisiana Supreme Court.

We assume our original brief made out our case and if we are able to break down the argument of the brief and disclose errors, fallacies, false premises, and wrong conclusions in all and every one of the "six (6) points" stated, we assume that our application will meet with favor in this Court.

I.

> "A patent to lands issued by the Land Department of the Government, is, untill annulled by judicial tribunal, conclusive against the Government, and all claiming under junior patents or titles."

This is a glittering generality to catch the unwary. We can imagine it said with a mighty roar before a jury.

In the home of the intervenors they soothe their fears by constant repetition. What is it worth before this Court?

Has this Court **ever decided** in a single case that a Patent null and void on its face, or which shows on its face the want of authority in the officer to execute, or which shows that the lands covered therein were withdrawn from sale - - - segregated the lands from the Public Domain; or that such a patent could not be treated as a nullity and collaterally attacked?

Of course not.

Why cite 8 decisions of this Court.

One decision would satisfy us and settle the question. Does this Court decide one thing to-day and another to-morrow?

At page 39 of our original brief we analyzed the decisions referred to by the Louisiana Supreme Court, and found they did not bear out this broadly stated proposition.

What becomes of the decisions cited by us from Page 42 to 47 (incl.) **in our brief?**

In other words, these gentlemen wish an effect given to the use of general language not justified by the facts in the instant case.

We can answer such contention in the language of this Court in the case of the **Northern Pacific R. R. Co. vs. DeLacy, 174 U. S. 634.** In that case the Circuit Court of

Appeals had cited the case of **Whitney vs Taylor, 158 U. S. 85,** as decisive of the case. This Court called attention to the fact that the citation from its opinion in **Whitney vs. Taylor,** was made with reference to an important and materal fact—not found in the case then at bar. In other words, the language of the Court must be construed in reference to the facts of the case under consideration.

In not a single case cited by Counsel under "Point 1" was there before the Court for consideration a patent null and void on its face. Hence the language used has no application to the case at bar - - - where we allege that "Patents that were issued" are null and void on their face.

Let us briefly examine the authorities referred to.

United States vs Thockmorton, 98 U. S. 70.

An analysis of this case shows how absolutely unreliable is a glittering generality or the broad statement of an abstract proposition and how painfully inapplicable is the citation.

That was a case in Chancery by Walter Van Dyke, United States Attorney, on behalf of the United States, against Thockmorton and others.

The object of the bill was to have a decree of Court, setting aside and declaring to be null and void a confirmation of the claim of W. A Richardson, under a Mexican grant, to certain lands, made by the Board of Commissioners of Private Land Claims in California on the 27th day of December, 1853; and the decree of the District Court of the United States, made February 11, 1856,

affirming the decree of the Commissioners, and again confirming Richardson's claim. The general ground on which this relief was asked was, that both decrees were obtained by fraud. This Court affirmed the decree of the Circuit Court sustaining a demurrer to the bill and dismissing it on its merits.

The Court said:

> "In fact, one great, if not fatal defect in the bill is the absence of any declaration of the means by which the fraud has been discovered or can now be established."

The Court then said:

> "There is another objection to the bill which, though not going to the merits, is, in our opinion, equally fatal to it in its present shape. We are of the opinion that, unless by virtue of an Act of Congress, no one but the Attorney-General or some one authorized to use him name, can bring a suit to set aside a patent issued by the United States, or a judgment rendered in its courts on which such a patent is founded."

There was in that case absolutely no question of nullity of the patent on its face.

The object of the bill was to set aside the confirmation of Richardson's grant by the Commissioners and the affirmance of this confirmation by a decree of the United States District Court for frauds in obtaining the confirmation and decree.

This is but a sample of the inexact or inapt citation of authority which almost exhaust us by the detail and vol-

uminous writings necessary to demonstrate the fact.

McLaughlin vs U. S., 107 U. S. 526.

This case has absolutely no application to the case at bar. This was a case where the District Attorney of the United States for California, on behalf of the United States, brought a bill to set aside a Patent of the United States conveying a quarter section to a Railroad.

Acts of Congress granted alternate sections to the Railroad, but excepted such sections or parts of sections as were mineral lands.

The bill alleges that a ¼ section was mineral land, and so at the time of the grant, and was known to be so when the Patent was issued, which was so issued without authority of law by inadvertance or mistake.

The Patent itself was not in the record as an exhibit or as part of the evidence.

The defendant Railroad Companies did not appear. McLaughlin defended as purchaser two degrees removed from the Company. This Court said;

> "The whole record is so imperfect and the case so obscurely presented that we feel tempted to dismiss it."

The objection was made that the suit was not instituted under authority of the Attorney General according to principle established in case of **U. S. vs Thorckmorton, 98 U. S. 61.** This Court affirmed the decree of the Court below, in favor of complainant.

This again was not a case involving the nullity of a Patent, which nullity was shown on its face.

Western Railroad Company vs. U. S., 108 U. S. 510.

This is the same case as

McLaughlin vs. U. S., 107 U. S. 526; United States vs. San Jacinto Co., 125 U. S. 273.

This again was a suit **not** involving the question of nullity of a Patent on its face.

This case decided several things, none of them in point.

(1) It decided that the Attorney-General was the proper government officer to initiate proceedings for the annulment of a patent and to prosecute the suit.

(2) That such a suit must be brought only when the United States has an interest in the matter by being under an obligation to make a title good, but not when the purpose is to benefit one of two claimants.

(3) The alleged fraud for which it was sought to anul the patent was in the **survey** of a confirmed Mexican grant, and it was charged that the Government officers were interested in the grant.

The bill was dismissed and the decree of the lower Court was affirmed.

United States vs Stone, 2 Wall 535.

This was a case cited by this Court in the last mentioned case; and the Court quotes Justice Grier as saying;

> "A Patent is the highest evidence of title, and is conclusive, as against the Government, and all claiming under junior patents or titles, untill it is set aside or annulled by some judicial tribunal. In England this was originally done by **scire facias**, but a bill in Chancery is found a more convenient remedy."

Turnig to this case of **United States vs Stone,** we find this is a case directly favorable to our contention.

This was a case of a patent void because the land was never within the tract allowed to the Deleware Indians.

The contention was made on behalf of Stone, who had bought the land from the Deleware Indians, that the government could not attack its own patent.

Justice Grier in deciding the case made use of the quotation given above and immediately followed it by saying:

> "Nor is fraud in the patentee the only ground upon which a bill will be sustained, patents are sometimes issued inadvisedly or by mistake, where the officer **has not authority in law to grant** them, or where another party has a higher equity and should have received the patent. **In such cases Courts of law will pronounce** them void. The patent is but the evidence of a grant, and the officer who issues it acts ministerially and not judicially. **If he issues a patent for land reserved from sale by law, such patent is void for want of authority.**"

This is absolutely our contention in this case. We have always contended that however **void** these patents or certificates of entry were, we could not compel by mandamus the Register of the Land Office to ignore them and receive our money and grant us a patent, because his act was ministerial, involved a discretion which we could not control by mandamus.

Justice Grier confirms this view by continuing:

> "But one officer of the Land Office is not competent to cancel or annul the Act of his predecessor. That is a judicial act, and requires the judgment of a Court."

This case is but in line with those cited in our brief.

Mowry vs. Whitney, 14 Wall, 439.

This was a case concerning a patent for an invention.

Smelting Co. vs. Kemp, 104 U. S. 647.

This case supports our contention and is cited and quoted at length at pages 42 and 43 of our original brief.

Emblem vs. Lincoln Land Co., 184 U. S. 660.

This case is analyzed by us in our original brief pages 40 and 41.

We ask now if we have not fairly shown that the authorities in support of the glittering generality involved in defendants in error "Point I" have no application to the case at bar

II.

Where the Land Department of the Government has issued a patent or certificate of patent to lands, no subsequent entryman or applicant, by his application, can acquire any vested right in, or vested right to, such land.

McMichael vs. Murphy, 197 U. S. 304.

This case decides what we have always conceded, viz: That a patent or entry, valid on its face segregates the tract of land from the public domain, and precludes another entry and the acquisition of any right.

But what has this to do with patents and certificates of entry and entries alleged to be null and void on their face as in the instant case?

In re Emblem, 161 U. S. 52.

Emblen vs. Lincoln Land Co., 184 U. S. 660.

These cases were analyzed in our original brief at pages 39, 40 and 41, and shown not to be in point but to be similar to **McMichael vs. Murphy.**

State Ex Rel Goodloe vs. Register, 47 An. 568.

Goodloe applied to the Register of the Land Office to buy certain State lands. He tendered the price. The Register refused the application upon the ground that the lands were no longer public lands, but belonged to the Pontchatrain Levee District under Act 95, 1890.

Goodloe brought mandamus proceedings.

Supreme Court held that the lands under Act 95 of 1890, vesting title in the Levee Board, had passed out of the State and held that the Register could not issue patents to lands thus transferred. His ministerial functions had ceased.

The Supreme Court said:

> "The Relator, it is true, has offered to become a purchaser and has made a tender of the price. **As the land were** not in the market, this could not have the effect of vesting him with title, whatever effect, as between the parties who desire to become purchasers of lands from the State, such a tender may have, the formality observed would have no effect against the Land Register, whose ministerial functions have been withdrawn by statute."

The Act 95 of 1890, was passed **prior** to the application of Goodloe for the lands and hence he had no standing to attack the constitutionality of the act.

In our case at bar, the lands are claimed by us to be State lands still, because of the absolute nullity of the patents and certificates of entry under which they were held, and Acts 85 and 86 of 1906, were passed **subsequent** to our application and tenders and we attack their constitutionality as impairing our vested rights.

The difference between the **Goodloe case** and our case is that of night and day.

IV.

The entry of public lands of the State or United States, **whether legal or illegal** (black-letter ours), segregates it from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until the prior entry is officially cancelled or removed.

Here, again, we have a glittering generality.

Let us see what the cases cited decide.

James vs. Germania Iron Co., 107 Fed. 603.

This was a contest between claimants holding the equitable title and claimants holding the legal title to land in dispute under a patent issued to Wm. Craig on Act 23, 1896. The land had been located with Sioux half-breed scrip. A contest arose between the locator of the scrip and one who applied to pre-empt the land. The contest had been heard, decided, appealed and finally reached the Secretary of the Interior for decision.

On February 18, 1889, the Secretary gave a decision directed to the Commission of the General Land Office

declaring the location of the scrip invalid, the pre-emption fraudulent and holding the lands open to disposal. The local land officers were informed of the decision on February 22, 1889, and on February 23, 1889, one Hartman applied to enter the land, which was allowed.

On February 19, 1889, however, after the Secretary's decision, but before it was communicated to the local land office, one James applied to make a homestead entry which was refused because the land was covered by the prior entry with Sioux scrip. A contest arose and on December 21, 1894 the Secretary of Interior held that James acquired the superior right.

The complainant urged that the finding was contrary to

> "an established rule, a settled practice, and a long line of decisions of the Land Department that no rights to enter or to secure the entry of land covered by a prior entry can be acquired by strangers to the litigation at the local land office before the decision of the invalidity of the prior entry is officially communicated to the local land officers and the prior entry is canceled on the books and plans in their office."

Sanborn, Circuit Judge, in deciding the case said:

> "Many questions have been argued and many decisions have been cited in the briefs of counsel which have little, if any, relevancy to this question, (whether the rule above referred to existed) and, before discussing it, some of these will be briefly mentioned and their immateriality noticed."

Unfortunately for us, this is the complaint we have to make against the brief of defendants in error; and this fact forces us unwillingly to write pages to show this irrelevancy.

Judge Sanborn finally said:

> "The review of the rules and decisions of the Land Deparment in which we have indulged conclusively demonstrates the facts that, on February 23, 1889, when Hartman filed his application, there was, and there had been for fourteen years prior to that time, a printed rule of the Department to the effect that after the reports of the Register and Receiver upon a contest over an entry had been forwarded to the Commissioner, those officers should take no further action affecting the disposel of the land until instructed by the Commissioner; that the practice of the Department had conformed to the rule; that there had been no decision of the Department, which, after consideration or discussion of the rule, had modified it or limited its effect; that the few opinions cited against it do not mention or refer to the rule, and are either devoted to the consideration of other questions or to a repetition of the **obiter dictum** in the **Reed case. In this state of the case, what was the true construction and legal effect of this rule on February 23, 1889?** Even if the opinions cited against it had decided that the rule was abrogated or limited, they would have been nothing more than eroneous judgments. They could not have affected the rule. Their only effect would have been to have caused the issue of the patents to the particular tracts of land whose title was in question, in them, to the wrong party. **Nothing short of an express and formal repeal or abrogation**

> **of the rule, and public notice thereof by the Secretary, who alone had the power to establish and overthrow rules, could have destroyed its force or limited its terms.** (Revised Statutes, 453, 2478.) All the authorities were that this rule, and a practice in conformity with it, obtained during the pendency of a contest, and all that discussed the question were of opinion that it continued in force until the decision of the Secretary or Commissioner was officially communicated to the local land officers." (Black-letter ours.)

The Court below had found that under the rule and practice stated the land remained **withdrawn** from acquisition at the local office until the decision of the Secretary that the prior entry was void was officially made known to the local officers and until notation of cancellation was made in the plats and records.

This finding was sustained.

Thus were the lands segregated by operation of the rule in force in the Land Office.

We, therefore, see that this decision was based entirely upon a rule of long standing in the Land Department of the United States.

The rule had its origin, as Judge Sanborn shows, in the desire to protect the citizens of the vicinage who might be 1000 miles from the Secretary's office against a preference which could be acquired by a sentinel stationed in the Secretary's office at Washington.

This case and the class of cases to which it belongs have no application to the case at bar.

There is no such necessity for such a rule in the Land Department of Louisiana and **no such rule exists.**

Kansas Pacific Ry. Co. vs. Durmeyer, 113 U. S. 629.

This involves another class of cases that have no application to the facts of the case at bar. They involve the construction of a particular act of Congress, being a grant to a railroad.

Mr. Justice Miller delivered the opinion of the Court.

The case involved the interpretation of the Act of Congress of 1862, 12 Stat. at L. 489.

Section 3 of Act 1862, making the grant to the Railroad of every alternate section, designated by odd numbers * * * not sold, reserved * * and to which a preemption or homestead claim may not have **attached** at the time the line of said road is definitely fixed.

The Court found in that case that the

> "claim was made and filed in the land office, and there recognized, before the line of the Company's road was located. The claim was an existing one of public record in favor of Miller when the map of plaintiff in error was filed. In the language of the Act of Congress, this homestead claim had **attached** to the land, and it, therefore, did not pass by the grant."

Justice Miller continuing said:

> "Of all the words in the English language, this word **attached** was probably the best that could have been used. It did not mean mere settlement, residence or cultivation of the land, but it meant

> a proceeding in the proper land-office, by which the inchoate right to the land was initiated. It meant that by such a proceeding a right of homestead had fastened to that land, which could ripen into a perfect title by future residence and cultivation. With the performance of these conditions the company had nothing to do. The right of the homestead having attached to the land, it was expected out of the grant as much as if in a deed it had been excluded from the conveyance by metes and bounds."

Sioux City Co. vs. Frifeey, 143 U. S. 32.

This case was similar to the Kansas City case just analyzed, **113 U. S. 629,** and involves construction of a particular railroad grant and what the word "attached" meant.

Whitney vs. Taylor, 158 U. S. 85.

This was again a case involving a pre-emption claim. Mr. Justice Brewer was the organ of the Court. The case turned upon the question whether at a certain date when the railroad filed its map of definite location.

> "the tract in controversy was public land of the United States and therefore passing under the grant to the Company, or was excepted therefrom by reason of the previous declaratory statement of Jones."

Justice Brewer refers to **Kansas Pacific R. Co. vs. Dunmyer, 113 U. S., 629,** involving the abandoned homestead claim of one Miller and quoted the language of the Court interpreting the word "attached" in the Act of Congress.

The mere initation of an inchoate right by the homesteader or pre-emptor was sufficient to cause his claim to

"attach" to the land, which excepted it from the grant because the grant covered only land "to which a pre-emption or homestead claim may not have attached."

Justice Brewer further called attention to the fact that "the granting clause of the Pacific Railroad Acts" differs "from similar clauses in other railroad grants" and "excepts lands to which pre-emption of homestead 'claims' have been attached, instead of simply cases of pre-emption or homestead rights."

Justice Brewer also says:

> "In this respect notice may also be taken of the rule prevailing in the land department where the filing of a declaratory statement is recognized as the assertion of a pre-emption claim which excepts a tract from the scope of a railroad grant like this." Citing authorities.

North Pacific R. R. vs. Sanders, 166 U. S. 620:

Construction of Pacific Railroad grant as to excepting mineral lands.

Justice Harlan said, that:

> "It appears from the above statement of the case: That lands were expressly excepted from the grant made for the benefit of the Northern Pacific Railroad that were not free from pre-emption 'or other claims or right' at the time the line of the railroad definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office."

And the Court held that the applications to purchase these lands, made in the form prescribed by the Acts of

Congress constituted "claims" within the meaning of the third section of Act of 1864, making the railroad grant.

North Pacific R. R. vs. DeLacey, 174 U. S. 622:

This case is cited by counsel in error.

This was a case where the claimants lost their rights of pre-emption by operation of law because they allowed the thirty months after the date prescribed for filing their declaratory notices to elapse without making proper proof and payment for the lands claimed.

They were on the face of the record no longer an "existing" claim.

The Court said:

> "A claim is not an existing one where by the record it appears that the right to make proof and payment has expired under the terms of the statute."

And the Court held it was unnecessary to enter a cancellation on the record of the office in order to permit a law of Congress to have its legal effect; and, therefore, held that the lands was not excepted from the grant.

Thus we see, by a careful and full examination of every authority cited by defendants in error in their "Syllabus" 3, that the statement that an entry of public lands of the United States, whether legal or illegal segregates it from the public domain, had only been made (1), in those cases where a rule of the Land Department, to avoid the advantage to be gained by unscrupulous per-

sons from the fact that the office of Secretary of Interior was at Washington perhaps one thousand or two thousand miles removed from the local land office, **required** that a **physical cancellation of the entry** on the books of the local office after formal notice of the decision of the Secretary of the Interior, before another application, or entry would be received; and (2), in interpreting in the Pacific Railroad Land grant Acts the section referring to pre-emption or homestead claims which had "attached" to the land or declaring that and in holding that all lands to which such claims, whether valid or invalid, had attached were **excepted** from the grant.

It has taken time and given us much labor to show that these decisions have no application to the case at bar.

What is the case at bar?

Act 75 of 1880, was the Act in force when the assignees of John McEnery **located** with the absolutely null and void scrip or certificates (null and void on their face because "made locatable upon any vacant lands of the State" in defiance to Act 23 of 1880), lands **not recovered by John McEnery.**

Act 75 of 1880 is found in the appendix of our original brief, page 54. Section 5 of that Act made it a felony for the Register of the Land Office to receive **anything** but money, **cash**, for the sale of public lands, and made it a felony for him to make an **entry** on his books until he had the receipt of the State Treasurer, showing the cash had been actually paid the State.

Every acre of the 83,000 acres involved in this suit was located, "entered" with this illegal McEnery scrip in violation of the Statute above.

Section 10, fixes the price to be paid at 75 cents an acre.

An entry made with illegal scrip or any kind of scrip when the statute made it a crime to record the entry except for cash is a nullity on its face.

Counsel complains we do not allege as a fact that the "entries" were null and void on their face.

Counsel overlook the fact that such an allegation would not be an "allegation of fact" but "a conclusion of law."

We allege the certificates were null and void on their face (which is a conclusion of law) because they were "made locatable upon any vacant lands of the State" (which is a statement of fact). And we allege that **these certificates** were issued and made thus locatable in conformity with the illegal contract made with John McEnery, and in violation of the express prohibition contained in the **proviso** of Act 23 of 1880.

That is why it results as a conclusion of law to be decreed by the Court that these **entries** were absolutely null and void on their face.

The Supreme Court of Louisiana in this case (Tr., p. 85), has recognized that Acts 85 and 86 of 1906, have repudiated payments made with these certificates for patents or certificates of entry.

This brings us to Point 4 of Syllabus, which fortunately contains a palpable inaccuracy.

We will first dismiss points 5 and 6 from our consideration and then discuss point 4, and generally the case.

Point 5 claims this is a moot case—because we have no interest.

In the first place, we are now considering the final judgment and opinion of the Supreme Court of Louisiana, not random arguments of intervenors.

The Supreme Court did not decide this was a moot case, and hence we are not called upon to combat extraneous matters.

The point necessarily "begs the question." If we had a vested right, we have a real interest.

The point is have we a vested right. If we have then Acts 85 and 86 of 1906 impair that right and hence are violative of the Federal Constitution.

Hence, we have a clear-cut Federal question before the Court, and to ascertain whether we have a vested right, it must first be determined whether the certificates, entries, certificates of entry and patents attacked are absolutely null and void on their face.

The relief we ask is to decree Acts 85 and 86 of 1906 unconstitutional and void as to us, which will prevent the carrying out of their provisions to our detriment.

To say we have no actual interest is to say we have no vested right—which is really "begging the question" and the very point at issue.

Point, 6, we are advised, is not "concurred" in by the Attorney-General who signs the brief.

The brief cays "This point by intervenors."

As the point is not made by the "defendants in error" we feel we are excused from answering it.

We have now examined every decision cited in the Syllabis of "defendants in error." It is to be assumed that they put their strongest cases in their syllabus.

We submit, with confidence, that our analysis has been searching and exact and that while the statement of general propositions given by the defendants were made by the Courts, they were made in cases that bear no analogy to the case at bar, were in reference to facts totally different, and in Points 2 and 3, were uniformly the result of the interpretation and the giving effect to establish rules in the United States Land Office, with which this case has nothing to do, or the construction of special railroad grant Acts.

Summarizing the defendants' claims, we assert with positiveness.

(1). That this Court has never decided that an entry, or certificate of entry, or patent, null or void on their face, which showed on their face either the want of authority of the officer to issue them, or that the lands designated had been withdrawn, segregated the lands from the public domain.

The decisions cited by us in our original brief, pages 42 to 47, attest the contrary.

We do not contend that an entry, certificate of entry or patent *prima facie* valid does not segregate the lands.

Such are the cases cited by defendants in error at page 15 of their brief, and cases like **Carroll vs. Safford, 3 How. 460,** involved no question of invalidity of certificate but merely the question whether, when land has been purchased from the United States and **paid** for and a final certificate given, is it taxable property—before the issuance of a patent.

The Court decided it was taxable.

The entries, certificates of entry and patents in the instant case are not only not **prima facie** valid but absolute nullities.

We have demonstrated, we hold, beyond cavil, that the authorities cited by defendants in error have absolutely no application to the case at bar.

We now take the argumentative part of their brief and regret to see so much unintentional mis-statement of facts and the case, that requires time, labor and expense to set straight, with added danger of making our brief tedious to this Court.

At page 9 of brief, they state that our allegation quoted on page 8 to-wit:

> "That these certificates (scrip) were assigned by the said John McEnery, **whose assignees located them** upon the public lands hereinafter described," etc., means (quoting "that some of the purchasers of the scrip located it."

Why are we called upon to answer such **argument**.

When we say that the assignees of John McEnery located their scrip, we mean **all** the assignees, not **some**. If we had meant **some** we would have said so.

The quotation from our petition, at page 8, reads:

> "for which patents thereafter illegally and fraudulently issued to some of said assignees, while others stood upon their certificates (scrip)."

A quotation should not contain interpolated words, without explanation. We did not use the word (scrip) which is gratuitously supplied by defendants.

Counsel then say that we mean (quoting) "while others stood upon their scrip—i. e., made no attempt to locate their scrip at all."

How can counsel make such an argument. We have just stated that **all** the assignees **located their certificates while** only **some received** patents.

We averred that the assignees of John McEnery located their scrip.

What right have counsel to say that we said **some** assignees did not locate their scrip.

The allegation is **all assignees located** their scrip, while **some** assignees got patents and other assignees stood upon their certificates.

The attempt to justify the statement of the Supreme Court that throughout the petition the word "certificate" is used as synonymous with "scrip" leads to a reductio ad absurdum.

The scrip or certificates simply entitled John McEnery and assignees to a designated number of acres of land, 40, 60 or 120, or more.

No land is described in such certificates or scrip.

When scrip or certificates are **located**, particular lands are **selected.**

How could a person stand on his **unlocated scrip?**

How could scrip or certificates which merely entitled the holder to 40 or 60 acres of land—be a title or claim to any particular lands.

The counsel then say (quoting page 9):

> "There are then two classes of people **according to the petition** (black-letter ours). Those holding patents to the land and those holding the McEnery scrip **which had not been located on any land.**"

This statement and argument are so unfair and misleading we offer our apologies to the Court for being compelled to consider it.

Fortunately, the defendants in error cannot dispose of our case by mis-statements.

Where a petition is being construed, and the language is direct, positive and unambiguous but a word is used in palpably two senses, the Court will adopt the construction which will make sense—not a forced construction that makes nonsense.

We averred that the Register issued to John McEnery a large number of certificates: that these **certificates were assigned** (this means **all the certificates that were issued were assigned** because we did not qualify the statement) that his assignees **located** these certificates (which means that **all of his assignees**, because again we did not qualify

the statement); that patents were thereafter issued to **some** assignees (this means that **all** did not get patents, but only **some**); and that others (assignees) stood upon their certificates (not scrip). The scrip or certificates **had been located.** They stood upon their **located certificates or certificates of location, or entry.**

If the scrip or certificates **had not been located,** they would not have called for any lands much less the lands described in the petition, as averred.

We use the word certificate, meaning scrip, in the first part of our allegation because the contract with John McEnery (Tr., p. 2) used it, but after we averred that these certificates had been **located,** and said some assignees stood on their certificates, we could not have ment unlocated scrip, but **located** scrip or certificates, certificates of location or entry.

If anything further were needed to show that our petition referred to or covered lands held only under certificates of entry, a reference to the prayer of the petition (Tr., p. 16) would settle the matter. Our prayer was to prohibit the Register of the Land Office from receiving payments from the "holders or owners of patents or **certificates purporting to convey** or to cover any of the lands described in the petition." A certificate which "conveys" particular lands described in the petition could not possibly be a piece of mere scrip as contended for by counsel.

Counsel for defendants in error build up an argument upon the distorted allegations of our petition and then

triumphantly declare that when the Supreme Court of Louisiana holds that a piece of scrip is not a certificate on entry—this is the construction of a local statute, a construction of a local land law; a rule of property.

What momentous effect is given to the declaration of a simple truth, not local, but as broad as our Continent.

Pray, what local statute is construed to arrive at this dictum? We are not informed.

Our original brief has covered this point. The lands involved are held (1) under patents and (2) under certificates of entry or location.

The Supreme Court of Louisiana quotes this Court as declaring that a patent (without qualification, hence a patent null and void on its face) once issued, segregates the lands from the public domain. The cases cited in support of the principle do **not** sustain it.

If this Court holds to the same effect, we have no cause of action as to the patented lands. But our petition covers also the lands that are held only under certificates of entry.

The Supreme Court of Louisiana in its opinion reached the conclusion, upon clearly a garbled or inaccurate quotation (which we have shown in deadly parallel in original brief, page 27) that we only applied to enter the lands held under patents, and not under certificates of entry.

They then decided that the Legislative Act 86 of 1906, had declared these certificates invalid on their face.

Therefore, if our petition covered applications for these lands held under certificates of location or entry, which the Legislature and the Supreme Court of Louisiana have held void, we have a vested right, as manifestly the lands never having been patented were still public lands.

This Court, therefore, will not consider the opinion of the Supreme Court given on the inaccurate and insufficient quotation of our petition, nor the argument of counsel above set forth upon their own distortion of our allegations, but will decide for itself **what lands we applied for and tendered the purchase price.**

We have already referred to **Pennoyer vs. McConnaughy, 140 U. S. (35 L. Ed.), 365.**

It is true we have not paid our money to the State, but we made a formal legal tender which has the same legal effect as payment.

This is so because the action or non-action of the officer could not make or unmake a vested right.

As said in **State Ex Rel, Goodloe, 47 An., 568,** the officer could not be compelled to accept our application. whatever effect as between the parties, the intending purchasers and the State, their applications and tenders might have.

This Court in **Frisbie vs. Whitney, 9 Wall. 187 (19 L. Ed., 669),** while holding that mere settlement on public lands gives no right against the government, commented on what Frisbie had failed to do, and said that he had gone upon the land, enclosed some, and built a house;

had applied to the Register and offered to make a declaration under the right of pre-emption. "That is all. He had paid no money, nor had he then **tendered any.**"

Counsel holds that we failed to claim plaintiffs in error are the first entrymen. We make no such claim, as a matter of course.

These certificates we allege, were "located by the assignees of John McEnery," entered; hence an entry was made.

They are in error when they say "They nowhere allege any informality or illegality in said entry."

The allegation (Tr., p. 4) is that the issuance of the scrip (which we elsewhere declare [Tr., p. 3] was made locatable upon any vacant lands of the State) was **ultra vires,** "and that said certificates conferred no right upon John McEnery or his assignees in and to the **lands located therewith,** i. e., entered therewith.

Again we aver (Tr., p. 13):

> "Petitioners aver that in every case, the lands herein described were entered with illegal McEnery scrip or certificates, heretofore set out," etc.

An entry made with a certificate void on its face, and against the law necessarily is void.

We have heretofore pointed out that the allegation that the entry was null and void would be a mere conclusion of the law.

We stated the facts. The Court will decree the nullity of the entry.

And the Supreme Court of Louisiana has recognized that Acts 85 and 86 of 1906, repudiated payments for certificates or entry—hence entries—with this null and void scrip (Tr., p. 85).

The petition proceeds upon the theory that no rights were acquired by the assignees of John McEnery in the lands entered with these null and void certificates.

This is so for Section 5 of Act 75 of 1880, the law in force at date of entry, prohibited an entry from being made except for **cash** and only after the **money** had been deposited in the State Treasury, and made it a **felony** for the Register of the Land Office to make an entry on his books otherwise.

This brings us to the final arguments of defendants in **error.**

They claim we have not averred that the patents are void on their face.

They state:

> "We might preface these quotations by saying that for the purposes of the present hearing, plaintiffs' allegations of fact are taken as true, but his allegations and conclusions of law and legal results of these facts are open to dispute, **8 La. An., 145; 124** etc."

We accept this proposition as correct, but by reason of the fact it is sound, defendants inconsistency is shown out of their own mouth.

Is it not certain that the **mere allegation** that an entry, scrip or certificate, patent or certificate of entry is null and void on its face is only a "conclusion of law."

If a petition did not show the **facts** which made such an entry, certificate or patent void would the allegation that they were void on their face amount to anything?

We say certainly not.

Hence, what matters it, if the petition alleges the **facts and circumstances** (which are taken for true) which make the entries, certificate and patents null and void on their face, whether we allege the conclusion of law to-wit: that such entries, certificates and patents are null and void **"on their face."** What matters it whether we supply the words "on their face?"

We have alleged them all absolutely null and void under the facts and circumstances stated or set forth

To have added the words "on their face" would not have made them so if, as a matter of law, they were not null and void on their face.

We have, however, made the distinct but unnecessary allegation demanded by defendants.

Defendants conclude this part of their brief by referring to **McEnery vs. Nichols, 42 An. 209.**

They state:

> "In that case apparently McEnery came before the Court with some of this scrip (not here alleged void on its face) and asked a mandamus to compel the Governor and Register to deliver patents to him, and this Court not only failed to note that the scrip was void on its face, but they made the mandamus peremptory and ordered the patents to issue. And what we seriously ask this Court to consider is:

"How did it happen, If these certificates be void on their face, and patently invalid, that five Justices of the Supreme Court of Louisiana not only failed to notice such invalidity, but ordered patents to issue?"

This is not only misleading but unfair—unfair because it is grossly erroneous. The same argument was made before the State Supreme Court, by counsel for an intervenor and the present brief copies the foregoing statement from their original brief.

We took occasion to go to the original record of case of **McEnery vs. Nicholls, 42 An. 209.**

This original record shows that no **scrip** was before the Court. The petition of John McEnery sets forth that certain lands (not here in contest) were recovered by him and were **partitioned** between the State and himself and that (quoting from the petition) "the following described internal improvement lands fell to relator" (John McEnery); that he demanded patents, which were refused him and he brings this mandamus suit to compel their issuance.

Therefore, when counsel for intervenors in a brief on behalf of the Attorney-General representing the real defendants in error, adopt the language and argument verbatim made by them before the State Supreme Court, after we have shown them their error of fact, we say it is unfair and misleading to this Court.

In **McEnery vs. Nicholls, 42 An. 209,** there was not a **piece of scrip before the Court.**

That is why five Judges did not notice their invalidity on their face.

In that case John McEnery asked for lands he had **actually recovered** and which had been aprtitioned and **alloted** to him.

We now come to the final argument of defendants, to-wit: that in deciding this case, the Supreme Court of Louisiana bases its decision upon its interpretation of a statute of the State, which is binding on this.

If the brief of counsel for defendants in eror had not been so full of glaring inaccuracies and misleading statements in argument, we might have some fear for our salvation on this point.

In our opinion, the Supreme Court of Louisiana has not predicated or put its decision on the construction of any statute of the State.

Let us see what the defendants in error claim.

They say (page 47 of brief):

> "Applying this doctrine to the case at bar **this Court would say:**
>
> "The local Supreme Court has held on a matter of local land law that the two acts of 1880 were not so violated as to make the patents issued thereunder void on their face, and the land was therefore segregated from the public domain. Taking this construction as a fact, and finding that at the time of Frellsen's entry the land was segregated from the public domain, we are asked to discover whether by his entry Frellsen acquired any veted right, and if he acquired such a vested right, whether the State's

> action in permitting the entryman whose entry had segregated the land to perfect that entry was a deprivation of Frellsen's vested right in violation of the Constitution of the United States." (Black-letters ours).

This is language that they would put into the mouth of this Court.

It will be noticed that the statement refers to "two acts of 1880."

Evidently, counsel mean Act 75 of 1880 and Act 23 of 1880.

The Supreme Court made not the slightest reference to Act 75 of 1880, in any part of either its original opinion (Tr., pp. 82 to 85) or opinion on rehearing (Tr., pp. 88 and 89).

Further, it did not consider the question of nullity of an entry made in violation of Sec. 5 of Act 75 of 1880.

The Supreme Court never held or referred to the entries made as having segregated the lands from the public domain.

Its decision was predicted solely and purely upon the doctrine that (quoting):

> "A patent under the great seal of the State vests the legal title in the patentee segregates the land from the public domain, and deprives the Land Department of jurisdiction. Hence a subsequent application to enter the same land confers no inceptive rights on the applicant. A patent cannot be revoked or set aside except upon judicial proceedings instituted on behalf of the Sovereign."

Citing authorities **161 U. S. 52; 184 U. S. 660,** etc., which we have analyzed and upon which we have commented. (Original opinion, Tr., p. 85). Everything else they say is merely argumentative.

This is shown by opinion on rehearing (Tr., p. 89), in which they state (quoting):

> "But the gist of our decision is that patents having **issued** the lands were thereby segregated from the public domain, and were no longer subject to entry. There is no authority or precedent that would warrant this Court to decree such patents to be null and void in a collateral proceeding to which the present holders of the patents are not parties."

Considering the fact that counsel for intervenors, present holders of a great many of the patents, have argued this case from its inception, orally and by brief and even now apparently write the brief in this Court, it is difficult to understand why they are not parties.

The decision of the Supreme Court is, therefore, not based on any statute, but upon the erroneous assertion of a principle confined only to patents *prima facie* valid.

When the Supreme Court of Louisiana, after referring to other matters argumentatively, says: "But the gist of our opinion is," we take it that the Court meant, "but we base our decision on" (the following ground, etc.

It is true that the Supreme Court, in its original opinion, referring to **McEnery vs. Nicholls, 42 An. 222,** said:

(Quoting): "In **State ex rel John McEnery vs. Governor, 42 La. An., 209,** it was held to be the duty of the

> Register to issue patents to the relator for his interest in all lands, warrants or scrip, recovered by him. While the question of the legality of the stipulation in the contract as to the issuing of scrip 'locatable on any public land' was not involved or discussed in that case, the duty of the Register to issue scrip under Act 23 of 1880, when lands were recovered in kind was announced. Ib. 222. Hence, the fact that the patents in question refer to Act 23 of 1880, or to certificates issuable under same, do not affect their validity."

It is equally true that the Court in **42 An. 222**, did make this declaration, but it was so patently an error of fact, that we cautioned the present Supreme Court against falling into the same error. Our admonition was in vain. They fell into the same error and used the language just above quoted.

We then, by an application for a rehearing, pointedly called the Court's attention to the perpetuation by it of an inexcusable error, and the Supreme Court, in its opinion, on our application for a rehearing (Tr., pp. 88 and 89) withdrew the language used in its original opinion, and corrected a mistake which had occurred by the Court's confusing the Act of the Legislature with the illegal part of the contract made with John McEnery.

As shown in the original opinion, the Court was under the impression that scrip or certificates were issuable under Act 23 of 1880.

Hence, on our application for a rehearing they corrected this improper finding by admitting that "Act 23 of 1880 does not, in terms, authorize the issue of scrip or certificates."

(See Opinion on Rehearing, Tr., p. 88.)

Of course it did not.

Why, it is asked? Because it provided that John McEnery should get part of the lands he recovered.

Hence, there was no necessity for any scrip. He became owner in indivision with the State of Louisiana of every tract of land he recovered.

The Court said, correcting their error:

> "In our opinion we referred to the case cited for the purpose of showing that *under the contract* (our italics) scrip and patents might have lawfully issued to John McEnery for his interest in lands actually recovered by him for the State of Louisiana."

So the Court withdraws its erroneous statement that scrip or certificates could have lawfully issued under Act 23 of 1880, and says it meant to say scrip could have lawfully issued "under the contract made pursuant to Act 23 of 1880," and patents might have issued for his interest in lands "actually recovered by him."

Why, of course. Nobody ever disputed that proposition.

The Court says that the mere reference to Act 23 of 1880 in a patent does not show its invalidity. That is all the Court says, on rehearing and final opinion.

But that is not all of our case.

We have also alleged that all of these patents refer on their face either to Act 23 of 1880, or to the certificate number, which certificate was absolutely null and void. (Tr., p. 13.)

And we had, theretofore, alleged that all the lands described in the petition had never been recovered by John McEnery. (Tr., p. 3.) And that these certificates were "made locatable upon any vacant lands granted to the State."

The Supreme Court of Louisiana has, therefore, restricted its decision to deciding that a patent segregates the land; and, while it refers *arguendo*, to the reference on the face of the patents to Act 23 of 1880, and says this mere reference does not make the patent null, yet it fails to pass upon the legal effect of the McEnery certificate number given on the face of the patent.

Now, we say that the Supreme Court of Louisiana advisedly failed to consider this point in our petition. Why, it is asked?

Because Act 85 of 1906 had declared the invalidity of patents

> "purporting, on their face, to have been paid for by certificates or warrants of **given numbers**, and where the certificates or warrants so referred to as having been given in payment for the patents, are, in fact, certificates or warrants for scrip, which scrip, for

any reason, was not legally receivable in payment for such patents."

(Act 85 of 1906, copied at page 35 of original brief.)

And because, further, the Supreme Court had held (Tr., p. 85) that these McEnery certificates "locatable on any public land," had been declared invalid by Acts 85 and 86 of 1906, and had been repudiated.

The argument is unanswerable therefore, that the Supreme Court did not pass upon the question of the legal effect of a reference on the face of the patents to McEnery certificate numbers, as being purchased therewith, because the Legislature having declared these patents **invalid on their face by reason of such reference,** the Supreme Court would have been compelled to have held accordingly.

They, therefore, preferred to rest their decision upon their statement of general law, to-wit: That a patent, valid or void on its face, segregates the lands.

They quote this Court for their authority.

That this Court has never so decided is too clear for argument.

Our allegation is that every patent refers on its face to **McEnery certificate number.**

Of course, your decision would only apply to such patents. On the trial on the merits a patent which did not, on its face, so refer to a McEnery certificate number would not be affected.

The Legislature of Louisiana having declared these patents **invalid on their face,** and the Louisiana Supreme

Court having put its decision on a general principle of law as broad as the continent, there is nothing in our respectful opinion for this Court to do but to reverse the decree of the Supreme Court of Louisiana.

This is, however, but one-half of our case.

We are claiming that all of the certificates did not go to patents, but that all of the assignees of John McEnery located or entered their certificates illegally made "locatable upon any vacant land," but **some** of them did not get patents, but stood on their **located certificates**, or certificates of entry.

The Supreme Court of Louisiana, as well as the acts of the Legislature (Nos. 85 and 86 of 1906) declared the invalidity of scrip "locatable on any public land," and repudiate payments made therewith. (Tr., p. 85).

As the absolute nullity of these certificates of location or entry is recognized, there is nothing for this Court to do but to hold that we have a cause of action and a vested right to purchase these lands, if our petition embraces lands not patented but held under located certificates or certificates of entry.

This whole case comes upon the allegations of our petition.

If the lands described in our petition and alleged to be held under located certificates or certificates of location or entry, null and void on their face, did not segregate the lands from the public domain, or, if the patents admitted by the Legislature and the Supreme Court to be invalid upon their face, did not segregate the lands—

then the lands were public lands, and, when we accepted the invitation of the State of Louisiana to purchase its public lands and tendered the purchase price to the proper officers, we acquired a vested right which could not be impaired by Acts 85 and 86 of 1906, passed subsequent to our applications and tenders, and which authorized third persons to validate their title by paying $1.50 in the State Treasury, thus ignoring our applications and tenders.

The Supreme Court of Louisiana cannot give effect to Acts 85 and 86 of 1906, and impair our vested rights by stating erroneously that this Court has decided that a patent void or valid on its face segregates the lands from the public domain, and we acquire no rights by our applications and tenders. But even if this Court should which we cannot believe possible, sustain such a doctrine, this Court must find that our petition included or covered lands held under certificates of location, and as the Supreme Court of Louisiana declares that Acts 85 and 86 of 1906, recognized the nullity of certificates of location purchased with McEnery scrip "locatable on any vacant land," and this is our case this Court must in every event hold we have a cause of action at least for these lands.

The judgment of the Supreme Court of Louisiana should be reversed.

Respectfully submitted,

H. G. MORGAN,

P. M. MILNER,

Attorneys for Plaintiffs in Error.

Supreme Court of the United States.

October Term, 1909.

No. 129.

J. W. FRELLSEN AND COMPANY
A Partnership Composed of Joseph W. Frellsen and James D. Hill,
Plaintiffs in Error,

VERSUS

A. W. CRANDALL ET AL.
Register of the State Land Office, Et Al.

SYLLABUS.

1. A patent to lands, issued by the Land Department of the Government, is, until annulled by judicial tribunal, conclusive against the government, and all claiming under junior patents or titles, and,

"Only the Government, under sanction of the proper authority, can institute proceedings to annul or rescind the patents. And such proceedings must be before judicial tribunals with citation to patentees and assigns.

United States vs. Throcknorton, 98 U. S. 70; McLaughlin vs. United States, 107 U. S. 526; Western Railroad Co. vs U. S., 108 U. S. 510; United States vs. San Jacinto Co., 125 U. S. 273; United States vs. Stone, 2 Wall. 535; Mowry vs. Whitney, 14 Wall. 439; Smelting Co. vs. Kemp, 104 U. S. 647; Emblen vs. Lincoln Land Co., 184 U. S. 660.

2. Where the Land Department of the Government has issued a patent or certificate of patent to lands, no subsequent entryman or applicant, by his application, can acquire any vested interest in, or vested right to, such land.

After a patent has once issued, the original contest is no longer within the jurisdiction of the Land Department.

McMichael vs. Murphy, 197 U. S. 304; In re Emblen, 161 U. S. 52; Emblen vs. Lincoln Land Co., 184 U. S. 660; Sate ex rel. Goodloe, 47 An. 569; and many other cases cited in the brief.

3. The entry of public lands of the State or United States, whether legal or illegal, segregates it from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until the prior entry is officially cancelled or removed.

James vs. Germania Iron Co., 107 Fed. 603; Stimson vs. Rawson, 62 Fed. 426; Words and Phrases, 8, 7308; Kansas Pacific Ry. Co. vs. Dunmeyer, 113 U. S. 629; Sioux City Co. vs. Griffey, 143 U. S. 32; Whitney vs. Taylor, 158 U. S. 85; North. Pac. R. R. vs. Sanders, 166 U. S. 620; North. Pac. R. R vs. DeLally, 174 U. S. 622; and cases cited in brief.

4. Where a plaintiff alleges that patents to public land issued by the State are void because issued contrary to provisions of Act 75 of 1880 of the State, and paid for in certificates issued contrary to Act 23 of 1880 of the State, and where the State Supreme Court, construing these statutes, holds that the certificates might have been properly issued under Act 23 of 1880, and holds that the patents might properly have issued under Act 75 of 1880, and, hence, such an allegation is not an allegation that these patents are void on their face, the Supreme Court of the United States will be bound by that finding of the State Supreme Court; it being (a) a rule of property; (b) a decision regarding alienation of a state's own public land; (c) a construction by a State Court of two State statutes.

(Authorities in body of brief.)

5. An action can only be brought by one having a real and actual interest **which he pursues.**

Inasmuch as the plaintiffs in this case ask for no relief or benefit for themselves, the case is a moot case.

Code of Practice of Louisiana, Art. 15; Moore vs. New Orleans, 32 An. 727; New Orleans Gas Light Co. vs. Hart; 40 La. An. 474; Louis vs. Saving Institution, 33 An. 1463.

6. Inasmuch as the scrip surrendered to the State of Louisiana when the lands in question were entered, undoubtedly had a value, the titles to these lands cannot be annulled without restoring to the owners, the value with which they parted.

(This point by intervenors.)

If the Court Please:

The plaintiffs in this case filed in the District Court for the Parish of East Baton Rouge, State of Louisiana, a petition seeking an injunction against A. W. Crandell, Register of the State Land Office, and Paul Capdevielle, Auditor of the State of Louisiana, and James M. Smith, Treasurer of the State of Louisiana, enjoining them from receiving $1.50 per acre from certain entrymen which these entrymen were alleged to be about to tender in order to perfect their titles to certain lands which had belonged to the State. The facts alleged in the petition are thus summarized by the Supreme Court of Louisiana, on page 83 of the present transcript:

> "The lands described in the petition were acquired by the State of Louisiana under the Swamp Land Grants of 1849 and 1850. In the year 1880 the Legislature (of Louisiana) passed Act No. 23, authorizing the Governor to institute proceedings and to employ counsel to recover for the State lands donated by the several acts of Congress for divers purposes, and the value of such lands in money or government scrip which might have been illegally disposed of by the United States. The act provided 'that the State shall incur no cost or expense in the prosecution of said claims other than an allowance to be made by the Governor out of the lands, money or scrip that may be recovered.'
>
> "In March, 1880, the Governor of the State entered into a contract with John McEnery, an attorney-at-law, to recover the lands, money and scrip referred to in Act 23 of 1880, and agreed to pay him for his services 'fifty per centum of the land, money or scrip

recovered, to be paid as provided in said Act No. 23.' It was further stipulated that 'where lands in kind are recovered the compensation as aforesaid of the said John McEnery shall be represented in scrip or certificates, to be issued by the Register of Land Office of the State, locatable upon any lands owned by the State.'

"The Legislature, by Act 106 of 1888, repealed Act 23 of 1880, and abrogated the said contract between the Governor and John McEnery (said abrogation to take effect January 1, 1889).

"John McEnery, prior to January 1, 1889, had recovered for the State many thousand acres of land, for which scrip or certificates locatable upon any lands owned by the State was issued to him. These certificates were sold and assigned by John McEnery and some of his assignees located their certificates on the lands described in the petition 'which have not been recovered by the said John McEnery under the contract entered into by and between him and the then Governor of the State, for which patents were thereafter issued.' The other assignees (to quote the language of the petition) 'stood upon their certificates.' It was argued at the bar that some of the lands described in the petition were not covered by patents but by certificates of entry. We have already quoted the allegation that patents issued for such lands. This fact appears also from the following allegations of the petition—to wit:

" 'Petitioners aver that in every case the lands herein described were entered with illegal McEnery scrip or certificates, heretofore set out, and the patents that were issued therefor refer upon their face to Act 23 of 1880, or to the certificate number, which certificate showed upon its face it was issued under Act 23 of 1880.'

"The word **certificate** is used throughout the petition as synonymous with **scrip**, and we cannot understand how a mere warrant locatable on any public land can be considered as the equivalent of a certificate of entry or receiver's receipt showing that the applicant has paid for a particular tract of land, and is entitled to a patent therefor. Hence, this case must be considered and determined on the assumption that patents issued to the assignees of John McEnery for all the lands described in the petition.

"In March, 1905, plaintiff made application for the entry of all the lands described in their petition under the provisions of Act 125 of 1902, and made a legal tender of the statutory price to the proper officials. **This application was refused by the Register for the reason that said lands had been previously entered and patented.** Plaintiffs took no legal proceedings against the Register to compel him to accept the price and to issue the proper certificate of entry.

"In the year 1906 the Legislature passed Acts 85 and 86, the former referring to patents and the latter to certificates of entry paid for in certificates or warrants for scrip, 'which were not legally receivable in payment, for the price of public lands. In both cases the Legislature provided for the confirmation of such patents and certificates of entry to the present holders and owners thereof, on payment in cash of the price of $1.50 per acre within one year from the date of the passage of said acts. The present suit was filed on July 12, 1906, a few days after the passage of Acts 85 and 86 of 1906. The sole defendants are the Register of the State Land Office, the State auditor and the State Treasurer. The relief prayed for is a decree perpetually enjoining the defendants from executing the provisions of Acts 85

and 86 of 1906, and declaring said acts to be unconstitutional, null and void."

The grounds alleged for the unconstitutionality of the Acts of 1906 are that plaintiff, by his application to enter, made March 28, 1905, acquired a vested right to the land, which vested right the State was divesting by permitting the holder of the alleged illegal patent to perfect his title.

To this suit there intervened various parties alleging that they had purchased the lands mentioned in the plaintiff's petition in good faith, for value, on the faith of the public record and outstanding patent from the patentees that they had been living on, cultivating and paying taxes on same for some twenty to twenty-five years, and that their patents and rights should not be disturbed. The original plaintiffs objected to these interventions. Thereafter (to quote from plaintiff's petition for a writ of error, page 91), an exception of no cause of action or general demurrer was filed by the Attorney General on behalf of the defendants, and the case went to trial upon the petition of the plaintiff and the exception of no cause of action or general demurrer.

The case was argued at length in the lower court. The District Judge found that the petition disclosed no cause of action and dismissed same. Plaintiffs appealed to the Supreme Court of the State, where, after argument, that tribunal also found that the petition disclosed no cause

of action, affirmed the decision of the Judge **a quo**, and dismissed the suit. From this judgment of the Supreme Court of Louisiana original plaintiff has sued out this writ of error.

FACTS IN DISPUTE.

The plaintiff takes issue with the Supreme Court of Louisiana which, as above quoted, found that plaintiff had alleged in his petition that patents had issued prior to his application for all of the land described in his petition. The following extracts from plaintiff's petition (page 3 **et seq.** of this transcript) show his allegations in this regard:

Page 3. Petitioner avers:

> "That the Register of the State Land Office, acting under the provisions of this illegal and void contract * * * issued to said John McEnery a large number of the **certificates** (i. e., scrip), the issuance of which was provided for only in and by said illegal clause contained in said contract covering in the aggregate a vast acreage, to the State by acts of Congress. * * * That these certificates (scrip) were made locatable only upon any vacant land granted to the State by acts of Congress. * * * That these certificates (scrip) were assigned by the said John McEnery, whose assignees located them upon the public lands hereinafter described, which had not been recovered by the said John McEnery under the contract entered into by and between the then Governor of the State, for which patents were thereafter illegally and fraudulently issued to some of said assignees, while others stood upon their certificates (scrip."

Now, if this allegation means anything, it means that when John McEnery made the recovery of the land the Register issued to him certain scrip or certificates; that this scrip or these certificates he sold, and that some of the purchasers of this scrip located it on the public land and got patents, while others stood upon their scrip—i. e., made no attempt to locate their scrip at all. There are then two classes of people, according to the petition: Those holding patents to the land and those holding the McEnery scrip which has not been located on any land. All those who made entries received patents. Those who stood upon their scrip made no entries or applications of any kind to enter; their scrip is not identified with any particular land; and, hence, are not concerned in this suit, or, as the Supreme Court of the State put it:

> "The word "certificate' is used throughout the petition as synonymous with scrip, and we cannot understand how a mere warrant locatable on any public land can be considered as the equivalent of a certificate of entry or receiver's receipt, showing that the applicant has paid for a particular tract of land and is entitled to a patent therefor."

In other words, the Supreme Court of Louisiana holds, and it is a question of pure Louisiana local land law, and is a fact that, in Louisiana, a certificate of entry or final receipt is one thing and a scrip certificate or piece of scrip is an entirely separate thing, and that Court holds that Frellsen alleged that persons who acquired McEnery scrip are divided into two classes: (1) Those who made entries and got patents; and, (2) Those who never located

their scrip at all, but simply held or "stood on" it.

The petition is dealing only with lands concerning which an entry has been made, and, hence, is not, and can not have any reference to those parties who simply stood on their scrip. Those who stood upon their McEnery scrip have never located it upon any specific public land, and, hence, could nowhere come in conflict with Frellsen & Co., who are claiming rights as to certain specifically-described land. On page 13 plaintiff made the further allegation:

> "Petitioners aver that in every case the lands herein described were **entered** with illegal McEnery scrip or certificates heretofore set out, and the patents that were issued therefor—**i. e.**, the patents that were issued in every case—refer upon their face either to Act No. 23 of 1880, or to the certificate number, which certificate showed upon its face it was issued under Act 23 of 1880, and said certificates (scrip) and said patents were, and are, absolutely null and void, illegal and of no effect." [Parenthesis by present writer.]

The foregoing is so conclusive against plaintiff that he is driven to extremity, and we find him in his brief clutching at a straw. He quotes his allegations of page 13, reading:

> "Petitioners aver that the Register of the Land Office refused petitioner's application and tenders on the **grounds stated** in his written refusal, made part hereof, to-wit: That said lands had been theretofore entered or patented to others."

And seriously contends that this is to be construed, not as an allegation of fact made by the Register, and quoted by plaintiff in order that it might be combatted and disproven, but an allegation of fact adopted by plaintiff, fathered and seconded by him, and made his own. It is obvious that the intent to father and adopt this allegation was an intent born of the exigencies of the situation in which plaintiff finds himself by his failure to make necessary allegations; and it is also evident that by adopting, as his own allegations the allegations of the Register, plaintiff would escape Scylla only to encounter Shipwreck on Charybdis; for if he adopts these allegation at all and fathers them and seconds them as his own, he adopts them at their face value, and he would be in the position of alleging as the Register undoubtedly did allege when he declined the application to-wit: "That all the land described in the petition has been heretofore **entered or patented and hence is no longer open to entry.** To adopt such an allegation would have the effect of putting plaintiff out of Court, for the reason that if he admits that when his application was made, the land was no longer open to entry, but was segregated by a prior entry, he admits that he acquired no vested right by his application.

Equally fallacious is plaintiff's further argument, when he seeks to explain the allegation of page 13, reading:

> "Petitioner avers that in every case the lands described were entered with illegal McEnery scrip,

> or certificates heretofore set out and the patents that were issued therefor refer upon their face. * * *"

A clause which logically and grammatically means "Petitioner avers that in every case the lands described were entered with illegal McEnery scrip or certificates, heretofore set out, (i. e., scrip heretofore described), and the patents, etc."

By stating that he meant to allege:

> "Petitioner avers that in every case the lands described were entered with illegal McEnery scrip or certificates **as** heretofore sent out (i. e., in the way in which I have set it out)."

Unfortunately for plaintiff, that fatal "as" was omitted. It is indispensably necessary to give the sentence the meaning now sought to be thrust upon it. Without it the sentence has no such meaning, but has and can have only the meaning given **supra.**

In this brief plaintiff confesses his own weakness. He says:

> "In explanation of the statement in the opinion of the Supreme Court of Louisiana to the effect that the word 'certificate' in the petition is used as synonmous with 'scrip' we have to say that an examination of a McEnery certificate issued by the Register of the Land Office will show that when it was 'located' an endorsement or certificate of entry was made on the back or reverse.
>
> "Therefore, in fact the original McEnery certificates became certificates of entry and were one and the same thing. That is why the petition uses the

word 'certificate' in a double sense, as McEnery certificates, and as certificates of entry, it being easily discernible which is meant by the context."

Counsel closes his argument with the above two paragraphs, which may be freely translated to mean: "Anyhow, even if I did say they stood on their scrip: Scrip and 'Final Receipts' mean the same thing, so it doesn't make any difference."

We are unable to concur with counsel in this view, and we are very sure that this Court is still less able to do so. A piece of scrip is a letter of credit which Government will accept in payment for land; no specific land but any land. A final receipt or certificate of entry is a document wherein Government recites that it has actually received the price of certain specified land; that it has been duly entered and is now segregated from the public domain. As your Honors said in the **Detroit Lumber Company case, 197, U. S.**, so much importance has been given to a final receipt that it seems almost to overshadow the patent itself. As we said above, plaintiff is unable to force upon us the theory that a piece of scrip and a final receipt are identical. But, says he, the two are identical in Louisiana, because the final receipt is endorsed on the back of the McEnery certificate. Where plaintiff got the facts upon which he relies to support this statement we have been unable to discover. **He certainly did not get them from this record,** or from the allegations of his peti-

tion. But even if it be true, it does not prove his point. To show that page 2, of this brief is written on the back of page 1, is not to show that the two pages are identical, and more than this, whether a piece of McEnery scrip and a final certificate of entry are the same thing under Louisiana law, is a simon pure question of local Louisiana land law, and the Supreme Court of Louisiana has decided that they are **not** the same thing. This decision of the Supreme Court of Louisiana is the final holding of a State Supreme Court passing upon:

1. A local statute.
2. A construction of a local land law.
3. A rule of property.

It is under the decisions cited **infra** conclusively binding upon this Court.

EVEN HAD PLAINTIF ALLEGED CERTIFICATES OF ENTRY, RESULT WOULD BE THE SAME.

It is to be noted that even according to plaintiff's own present theory of his allegations, all this land had either been patented or else had final register's receipts issued against it. And unless we are hopelessly confused in our reading of the decisions of this tribunal, it has been repeatedly held that the issuance of a final receipt or certificate segregates the land from the public domain, and prevents the acquisition of inceptive rights by subsequent entrymen as fully as does the issuance of a patent.

In **Stimson Land Co. vs. Rawson, 62 Fed. 426,** the Court said:

> "The decisions of the Supreme Court of the United States establish the following propositions:
>
> "When land has been sold by the United States and the purchase money paid, it becomes segregated from the body of the public lands, and is no longer the property of the Government, but is the property of the purchaser. **(Carroll vs. Safford, 3 How. 460; Witherspoon vs. Duncan, 4 Wall. 210; Worth vs. Branson, 98 U. S. 118; Simmons vs. Wagner, 101 U. S. 260.)** After a sale, until the patent is issued, the Government holds the mere legal title in trust for the purchaser, and in case of a resale the second purchaser would take the title charged with the trust. **(Carroll vs. Safford, supra; Lindsay vs. Hawes, 2 Black. 554.)**
>
> "When the right to a patent becomes perfect, the full equitable title passes to the purchaser with all the benefits, immunities and burdens of ownership. **(Benson vs. Alta, 145 U. S. 428.)** A contract for the purchase of the public land is complete when the certificate of entry has been executed and delivered. **(Witherspoon vs. Duncan, supra.)** A patent certificate protects the purchaser's rights as fully as a patent. **(Carroll vs. Safford, supra.)"**

McMichael vs. Murphy, 197 U. S. 304:

In this case no patent had issued, merely the certificate of entry, and yet the Court said:

> "The Supreme Court of the territory held that White's homestead entry was **prima facie** valid, and that, so long as Hoyt's entry remained uncancelled of record, it segregated the tract of land from the mass of the public domain, and precluded Mc-

Michael from acquiring the inceptive right thereto by virtue of his alleged settlement.

"We are of opinion that there was no error in this ruling. It is supported by the adjudged cases."

Quoting **113 U. S. 629; 132 U. S. 357; 143 U. S. 32; 158 U. S. 85; 166 U. S. 620; 174 U. S. 622; 193 U. S. 192.**

See, also, Words and Phrases, Vol. VIII, p. 7308, **Vested Right; Am. & Eng. Enc. of Law, Vol. XXVI, p. 390; 12 Cyc. 936; 135 Fed. 233; 107 Fed. 603.**

ARGUMENT.

Succinctly stated, plaintiff avers that the State officials wrongfully issued scrip to McEnery; that McEnery and his assignees entered certain land and paid for it with this scrip and received patents for it. That this scrip was not proper payment for the land. That, thereafter, plaintiff tried to enter the land, but his entry was rejected because the land had already been entered. That he acquired a vested right to the land by his attempts to enter, and that the State could not divest this vested right by allowing the first entryman to perfect his entry.

The argument is based upon the theory that the State of Louisiana is making a continuous open offer for the sale of her public lands; that any member of the public, such as Frellsen, who comes forward and accepts that offer, by his acceptance creates a contract with the State, which contract immediately confers upon the entryman or acceptor certain vested rights. With this proposition of law we are not presently quarrelling. It is obvious,

however, that in order to bring his case within it, Frellsen must show that at the time he stepped out of the crowd and communicated his acceptance, the State's offer was still open. It is obvious, further, that, if some one else had done so before Frellsen and accepted the State's offer on land described as X, the State's offer on land X would no longer have been open to Frellsen. The first question for us to consider then is: Was Frellsen the first acceptor of the States offer—i. e., was he the first entryman? For the purposes of the present hearing the allegations of Frellsen's petition are taken as true and so this question becomes:

HAS PLAINTIFF ALLEGED HIMSELF TO BE THE FIRST ENTRYMAN?

His allegations are as follows (we quote from his petition) transcript, p. 13, et al.:

> "Petitioners aver that they are the first and only applicants for said lands under the provisions of Act 125 of 1902, or of any other law of this State **since the date of the issuance of said illegal McEnry certificates and patents purchased therewith.**" (Page 13.)

> "**Petitioners aver that, accepting the invitation** of the State of Louisiana to make entry to its public lands, they, on March 28, 1905, made applications * * * **to enter the following lands.** (Page 4.)

> "Petitioners aver that the Register of the Land Office refused petitioners' applications and tenders upon the grounds stated in his written refusal made part hereof—to wit: that said lands had been **theretofore entered or patented to others.** (Page 13.)

> "Petitioners aver that, in every case, the lands herein described **were entered** with illegal McEnery scrip or certificates, heretofore set out, and the **patents that were issued therefor, etc.** (Page 13.)
>
> "Now, your petitioners aver * * * that these certificates were sold and assigned by the said John McEnery, whose assignees **located them upon the public lands hereinafter described,** * * * for which patents were thereafter illegally and fraudulently issued to some of said assignees, while others stood upon their certificates." (Page 3.)

Your Honors will observe that petitioner has given specifically the date of his application—to wit: March 28, 1905.

He has specifically alleged that the Register told him that the land had all been entered and patented by other people, and then he spcifically alleges "that, in every case, the lands herein described **were entered** with illegal McEnery scrip or certificates."

He then alleges, that the holders of these scrip certificates "located them upon the public lands hereinafter described * * * for which —(i. e., the public land hereinafter described)—patents were thereafter illegally etc. issued."

Your Honors will observe that plaintiffs have therefore, themselves **alleged** that, long before they ever thought of entering these lands, other parties had **entered them. They nowhere allege any informality or illegality in said ENTRY.**

Their allegation of illegality is confined to the patents; it is found on page 3, is quoted **supra, and reads:**

> "Assignees located them upon public lands hereinafter described, **which had not been recovered by** John McEnery, etc., for which **patents** were thereafter illegally and fraudulently issued to some of said assignees."

Continuing, he states why the patents issued to these prior entrymen are fraudulent and illegal. That reason, say they (p. 4) is because the scrip issued to John McEnery was not proper legal tender money with which to pay for patents to public land, and since these patents were paid for with that spurious coin, they are illegal and fraudulent. Suppose, now, such had been the case. Suppose these lands had been entered twenty years ago and paid for in counterfeit dollars (but dollars which the State officers and all others in interest thought good dollars), and suppose that, at this late date, after the patents had issued, and applicants for same had gone into possession, the counterfeit nature of these dollars was discovered, what would be the situation? Surely the entries or applications under and by virtue of which patents had issued, would still be on file; would still be the first applications and would prevent any subsequent applicant for the same lands from acquiring any vested rights therein. The only question at all would be that purely personal one between the State and these applicants concerning the payment of the purchase price of such lands.

We submit, therefore, that the allegations of plaintiffs' own petition conclusively show that they are not the first entrymen, and, hence, could not have acquired any vested rights in, or to, the lands referred to, and that, having no such vested rights, they have no cause of action to interfere with the state and intervenors in the disposition of the lands here in controversy.

This is no new question. The following cases have passed upon it:

State ex rel. Goodloe vs. Register, 47 An. 568:

> "The next question we are called upon to consider is: Can a party raise objection to the constitutionality of an act whose right it does not affect, and who is without interest. The relator, it is true, has offered to become a purchaser and has made a tender of the price. **As the lands were not in the market, this could not have the effect of vesting him with title.**"

Hastings vs. Whitney, 132 U. S. 361:

> * * * "The entry being made, and the certificate being executed and delivered, the particular land entered thereby **becomes segregated from the mass of public lands**, and takes the character of private property. The fact that such an entry may not be confirmed by the Land Office on account of any alleged defect therein, or may be canceled or declared forfeited on account of noncompliance with the law, or even declared void, after a patent has issued, on account of fraud, in a direct proceeding * * * is an incident inherent in all entries of the public lands."

Page 363:

> "Under the homestead law three things are needed to be done in order to constitute an entry on

public lands. First, the applicant must make an affidavit setting forth the facts which entitled him to make such an entry; second, he must make a formal application; and, third, he must make payment of the money required. * * * If either one of these integral parts of the entry is defective—that is, if the affidavit be insufficient in its showing, or if the application itself is informal, or if the payment is not made in actual cash—the Register and receiver are justified in rejecting the application; but if, nowithstanding these defects, the application is allowed by the Land Office and a certificate of entry is delivered to the applicant, and the enrty is made of record, such entry may be afterwards canceled on account of these defects * * * But these defects, whether they be of form or substance, by no means render the entry absolutely a nullity. **So long as it remains a subsisting entry of record, whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from the public domain, and, therefore, precludes it from subsequent grants.**" **(Quoted with approval, Hodges vs. Concord, 193 U. S. 196.)**

James vs. Germania Ins. Co., 107 Fed. 597:

A man entered land with "half-breed Sioux scrip." Entry was attacked and ultimately found void by Secretary. Question of acquisition of vested right by applicant subsequent to said entry and prior to its cancellation by Land Office arose. The Court said (p. 603):

"Turning now to the question at issue, the following proposition will be found to be established beyond controversy. The entry of the land by Straus, with his 'half-breed scrip,' **whether valid or void, segregated it from the public domain** and appropri-

ated it to private use, so that no legal entry could be made of it by James or by any other applicant."
• • • (Citing numerous cases.)

McMichael vs. Murphy, 197 U. S. 304:

Following the adjudicated cases, we are told that White's original entry was **prima facie** valid—that is, valid on the face of the record—and McMichael's entry having been made at a time when White's entry remained uncanceled, or not relinquished, conferred no right upon him, for the reason that White's entry, so long as it remained undisturbed of record, had the effect to segregate the lands from the public domain, and made them not subject to entry.

> "While the entry remained uncanceled of record by any direct action of the Land Office, or by relinquishment, could another person by making an entry acquire a right in the land upon which a patent could be based?"

The answer was, no.

A. & E. Ency. of Law, Vol. 26, p. 390:

> "When the authorized officers of the Government have issued a patent **or a certificate** under a land grant equivalent to a patent in due form of law, which on its face is sufficient to convey the title to the land described in it, it will be presumed that all the prerequisites to the issuance of a valid patent or certificate have been complied with, and the title conveyed is impregnable to collateral attack.
>
> "An entry of public lands under the laws of these United States, whether legal or illegal, segregates it

from the public domain, appropriates it to private use and withdraws it from subsequent entry or acquisition until the prior entry is officially cancelled and removed."

107 Fed. 603; 113 U. S. 629; 134 U. S. 42; 178 U. S. 85; 164 U. S. 622.

La. Sulphur Mining Co. vs. Krause, 110 La. 694:

"But plaintiff insists that the entry by Escoubas in 1861 is to be considered null **ab initio** for the reason that the price paid (25 cents per acre) was below that fixed by law for the sale of such lands.

"The contention is that the action of the land officials in selling below the minimum price (which plaintiff contends was, for the land in question, 25 cents per acre) was in violation of a prohibitory law, and, hence, no title was conveyed to Escoubas by the entry **he was permitted to make.**

* * * * * * * * * *

"Such a title as that of Escoubas would, at least, be recognized by the State until set aside regularly or canceled on proof of error on the part of its officials, or error or fraud on part of those entering the land."

In re Emblen, 161 U. S. 56:

In this case the act under which the patent issued was alleged unconstitutional

"The patent conveys legal title to the patentee and cannot be revoked or set side except upon judicial proceedings instituted in behalf of the United States."

Emblen vs. Lincoln Land Co., 184 U. S. 664:

"After a patent has once been issued the original contest is no longer within the jurisdiction of the

Land Department. The patent conveys the legal title to the patentee, and cannot be revoked or set aside except upon judicial proceedings instituted by the United States."

Smith & Wallace vs. Crandell, 118 La. 1052:

"A patent conveys the legal title to the patentee, and cannot be revoked or set aside except on judicial proceedings instituted by the sovereign.

"Where State patents issued in 1881 and plaintiffs in May, 1906, made application to enter the land covered by the patents and tendered the price and charges fixed by law, such application did not vest in the plaintiff any inchoate or inceptive rights to the lands, or give them any standing to sue to revoke such patents on the ground that the lands were illegally purchased for scrip instead of money."

Again in **Chauvin vs. Louisiana Oyster Commission, 121 La. 13,** the Supreme Court of that State, referring to the case of **Smith vs. Crandell, 118 La. —,** declared it had "held that a State patent conveys the legal title to the patentee, and cannot be revoked or set side, except on judicial proceedings instituted in behalf of the sovereign;" and that "the entry of public land, valid upon its face, segregates the tract of land from the public domain," citing **McMichael vs. Murphy, 197 U. S. 304.**

United States vs. Throckmorton, 98 U. S. 70:

Referring to the fact that the Attorney General of the United States alone should be authorized to bring suits to annul patents issued by the Federal Government, the Court says:

"The reason of this is obvious—namely, that in so important a matter as impeaching the grants of

the Government under its seal, its highest law officer should be consulted and should give the support of his name and authority to the suit. He should also have control of it in every stage, so that if, at any time during its progress he should become convinced that the proceeding is not well founded or is oppressive, he may dismiss the bill."

McLoughlin vs. United States, 107 U. S. 526:

In this case the Court went so far as to deny that a United States District Attorney could bring suit to annul a patent issued by the general government, holding that the Attorney General alone should have such authority.

See, also, **Western Pacific vs. United States, 108 U. S. 510,** and **U. S. vs. San Jacinto Tin Co., 125 U. S. 223.**

United States vs. Stone, 2 Wall. 535, the Court said:

"A patent is the highest evidence of title and is conclusive as against the Government and all claiming under junior patents or title, until it is set aside or annulled by some judicial tribunal."

Mowry vs. Whitney, 14 Wall. 439, the Court said:

"We are of the opinion that no one but the Government, either in its name or the name of its appropriate officer, or by some form of proceeding which gives official assurance of the sanction of the proper authority, can institute judicial proceedings for the purpose of vacating or rescinding the patent which the Government has issued to an individual."

Smelting Co. vs. Kemp, 104 U. S. 647, the Court said:

"It does not lie in the mouth of a stranger to the title to complain of the action of the Government

with respect to it. If the Government is dissatisfied it can, on its own account authorize proceedings to void the patent or limit its operations."

Yosemite Valley Case, 15 Wall. 93, the Court said:

> "The whole difficulty in the argument of the defendant's counsel arises from his confounding the distinction made in all the cases, whenever necessary for their decision, between the acquisition by the settler of a **legal right to the land** occupied by him as against the owner (the United States); and the acquisition by him of a **legal right as against other parties to be preferred in its purchase,** when the United States had determined to sell. It seems to us little else than absurd to say that a settler or any other person by acquiring a right to be preferred in the purchase of property, provided a sale is made by the owner, thereby acquired a right to compel the owner to sell, or such an interest in the property as to deprive the owner of the power to control its disposition."

See, also, **Cooley on Constitutional Limitations, page 199; 159 U. S. 491; 199 U. S. 578.**

Plaintiff relied, in the lower Court, upon the case of **Penoyer vs. McConnaughty, 140 U. S. 1.** When, however, your Honors examine this case, you will find that the land concerning which the contest arose had not been disposed of by the Government to any one else, and that McConnaughty was the first applicant for the same. No question arose in that case concerning the right of a private individual to attack or seek to set aside a patent issued by the State. All that was contended for there was as to the right of McConnaughty, who had made ap-

plication for land that could be disposed of, and who had done everything required of him by the statute.

When your Honors analyze that case thoroughly, you will see that the real question involved, and the one which was determined, was as to whether a suit brought against certain officers of the State of Oregon was a suit against the State. That was the real point at issue and the only one decided in that case, although the Court took occasion in reaching its conclusion to argue concerning what does and what does not constitute a vested right. In the case at bar, however, plaintiffs are mere strangers to the title. They have never had any right of the Government conferred upon them, and they occupy the precise position which was referred to in the case of the **Smelting Company vs. Kemp**, where this tribunal said:

> "It does not lie in the mouth of a stranger to the title to complain of the act of the Government with respect to it.
>
> "The **Emblen cases** in the United States Supreme Court are important upon this point, and present so clearly the analogous feature of a remedial or curative legislative act, as to be entitled to special notice; and so, although we have quoted them **supra**, we will refer to them once more:

In Re Emblen, 161 U. S. 52:

> "Weed obtained an entry certificate of purchase, entitling him, in due course, to a patent for the land. Before any patent was issued Emblen filed a protest in the Land Office, charging fraud, misrepresentation and perjury on Weed's part, and demanding a hearing as contestant. The decision of the Land

Office having gone against Emblen, he applied for and obtained a rehearing. Before such rehearing was had, and, consequently, pending the proceedings in the Land Office, Congress passed an act confirming Weed's entry and directing that a patent issue to him for the land. The patent was issued and then the Land Office declined to entertain any proceedings in the land contest, whereupon Emblen sued out a writ of mandamus to the Secretary of the Interior to hear and decide his contest, praying to have the act of Congress declared unconstitutional and void, and that the Secretary of the Interior be required to proceed to final adjudication and disposition of the contest. The Court denied the application and in its opinion said:

"'It is quite clear that (even if the act of Congress is unconstitutional, which we do not intimate), the writ of mandamus prayed for should not be granted. The determination of the contest between the claimants of conflicting rights of pre-emption, as well as the issue of a patent to either, was within the general jurisdiction and authority of the Land Department, and cannot be controlled or restrained by mandamus or injunction. After the patent has once issued, the original contest is no longer within the jurisdiction of the Land Department.'" Citing many cases.

In **Emblen vs. Lincoln Land Co., 184 U. S. 660,** a bill in equity was filed by Emblen against the Lincoln Land Company, and others, as suggested by the Court as the only possible remedy in the case already cited, and the Court held:

"While a contest for a pre-emption entry was pending, Congress passed an act confirming the entry and directing the patent to issue, which was done. **Held:**

That the act was within the power of Congress, and that its operation could not be defeated by a contestant who had never made an entry on the land nor perfected the right to do so.

Chief Justice Fuller, in deciding the case, said:

"The question arises whether it was within the power of Congress to exercise control over the land and direct, as it did, the issue of the patent to Weed, and that depends upon whether Emblen had obtained a vested right in the land before the passage of the act of December 29, 1894, as otherwise the power of Congress over its disposition as public land was plenary."

Citing **Frisby vs. Whitney, 9 Wall. 187; Shepley vs. Cowan, 91 U. S. 330; Bickston vs. Fraizer, 130 U. S. 232; Gonzales vs. Freack, 164 U. S. 345.**

"The Weed entry" (says the Chief Juctice) "had not been cancelled when the Act of 1894 took effect, so that Emblen **had no right to make entry under the Act of May, 1884.** The jurisdiction of the Land Department ceased with the issue of the patent, and the power of Congress to direct the patent to issue was unaffected by the **possibility** that Emblen, if he had been permitted to prosecute his contest, might have succeeded."

It is to be noted that Emblen's protest, if successful, would have given him a private claim to enter; and that he had everthing in the way of entering that the law allowed, which was to protest just as Frellsen has protested.

The State of Louisiana has the right, in her own discretion, to sue or not to sue to annul the patents issued by

her, and until she has exercised that discretion and has acted in the matter, and brought back, as part of the public domain, land which she may have patented, no individual can be said to acquire a right, much less a vested right, to lands so patented. The State has the right also, when she does bring back these lands, to announce who will be regarded as first applicants for them.

In this connection, we desire, at this time, to call the attention of this Court to the language of Acts Nos. 85 and 86 of the General Assembly of the State of Louisiana, approved July 6th and 7th, 1906, respectively. The title of Act No. 85 of 1906 contains the declaration

> "that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees or transferees, **shall be confirmed as applicants** for said lands **from the date of the issuance** of said patents, where the said patents were not paid for in money, but were paid for by certificates or warrants for script, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees, of said patents, to **validate and perfect** their title to the lands covered by said patents, or to any part or subdivision of such lands, within one year from date of passage of this act, by paying therefor in cash the price of one dollar and fifty cents per acre." (Our black-letter.)

This act declares that all persons holding patents from the State of Louisiana for lands which had been paid for with certificates or warrants for scrip "which, for any reason, was not legally receivable in payment for such

patents," their heirs, assignees or transferees, would be regarded and

> "**confirmed as applicants** in the State Land Office for the lands covered by such patents, or for any part or subdivision of such lands, **from the date on which said patents were issued,** and shall be entitled to **perfect and validate** their titles to the lands covered by their patents * * * within one year * * * by paying in cash to the State the price of one dollar and fifty cents per acre; * * * and, on making said payments, the said patents shall be valid and legal for all purposes, **as if payment therefor had been made in cash at the date of their issuance.**" (Black-letter ours.)

Act No. 86 of 1906 treats the subject of certificates of entry for public lands of the State of Louisiana and provides that the holders and owners of certificates of entry,

> "purporting on their face to have been paid for by certificates or warrants * * * for scrip, which scrip for any reason, was not legally receivable in payment for such certificates of entry * * * their heirs, assignees or transferrees, **shall be confirmed** as applicants in the State Land Office for the lands covered by such certificates of entry * * * **from the date on which said certificates of entry were issued, and shall be entitled to perfect and validate their titles** to the lands covered by their certificates of entry, within one year from date of passage of this act by paying in cash to the State the price of one dollar and fifty cents per acre; * * * and, on making said payments, the said certificates of entry shall be valid and legal for all purposes, **as if payment therefor had been made in cash at the date of their issuance.**"

It will thus be observed that the State of Louisiana, which had the undoubted right to declare what should constitute an application for any of her public lands, and who should be regarded as first applicants for the same, has announced, through the General Assembly of that State, in and by these two Acts, Nos. 85 and 86 of the year 1906, that all persons whose applications had been paid for in scrip not legally receivable, should be regarded as the first applicants for the lands applied for by them.

The State of Louisiana, having thus recognized and declared the intervenors in this suit, and all others similarly situated, to be ahead of plaintiffs, as first applicants for the lands sought to be acquired by the latter, on their paying to the State, within one year, from and after the respective dates of the passage of said acts, the sum of $1.50 per acre, which is the price fixed by the laws of the State of Louisiana at which her public lands, of like kind and character, may be sold, it puzzles us to understand the process of reasoning by which plaintiffs would have this Court hold that they have acquired any vested rights in and to the lands described in the petition filed in this suit.

The State of Louisian is alone entitled to complain of her public lands having been illegally disposed of, and she alone would have the right to sue to annul the patents and the certificates of entry referred to in Acts Nos. 85 and 86 of 1906. So far, however, from the State manifesting a disposition to disturb the holders of such patents and certificates of entry, she has declared. on the

contrary, that she will regard them, as well as their heirs, assignees and transferees, as first applicants for the lands described therein, on their paying $1.50 per acre for the same, within one year from and after the date that these Acts, Nos. 85 and 86, were passed, and that, on such payments being made, such patents and certificates of entry

> "shall be valid and legal for all purposes, as if payment therefor had been made in cash **at the date of their issuance.**"

We are at a loss, therefore, to understand what rights of plaintiffs have been interfered with by those two acts of the General Assembly of the State of Louisiana, or in what respect they would deprive them of any vested rights in or to the property described in their petition.

VOID ON THEIR FACE.

Plaintiffs admit that here were other entries made prior to their entry, but contend that these prior entries resulted in illegal patents, hence, their entry is the first one. And they cite authority to support the proposition that a patent which is void on its face may be collaterally attacked. None of the authorities cited, as far as we have read them, hold specifically that a patent void on its face fails to segregate the land from the public domain. However, we need not discuss that point presently, because plaintiffs have not alleged that the outstanding patents to this land are void on their face. We might preface these quotations by saying that for the purposes of the present hearing, plaintiffs' allegations of fact are taken as true, but his allegations and conclusions

of law and legal results of these facts are open to dispute. **8 La. An. 145; 124 La. State vs. Hackley, 772 La. 772; 31 Cyc., 33, 48 An. 631; 50 An. 266.** Plaintiffs have alleged, page 3:

> "Petitioner further avers that the hereinafter-described lands were not embraced in the lands recovered by said John McEnery, and were not recovered by him to the State under the aforesaid contract, and that the issuance to him, as aforesaid, by the Register of the State Land Office, of said certificates, as compensation for the recovery of other lands to the State, under the provisions of said contract, was illegal, null and void, and **ultra vires**, as neither the Governor nor the Register of the State Land Office had any right to issue, or consent to the issuance of, such certificates, and that said certificates conferred no right upon said John McEnery or his assignees in and to the lands located therewith; that the patents granted thereunder are null and void and ultra vires, and neither theissuance of the certificates nor the granting of the patents had the effect of segregating the lands, purporting to be conveyed, from the public domain.
>
> "That these certificates and these patents are absolutely null and void, and did not divest the interest and title of the State in or to said lands.
>
> "That the lands which they purport to convey never became segregated by such conveyance from the public domain, but remained subject, as such public lands, to sale and entry, under existing laws, by the first applicant therefor."

Page 13:

> "Petitioners aver that, in every case, the lands herein described were entered with illegal McEnery scrip or certificates, heretofore set out, and the pat-

ents that were issued therefor refer, upon their face, either to Act No. 23 of 1880, or to the certificate number, which certificate showed upon its face it was issued under Act 23 of 1880, and said certificates and said patents were, and are, absolutely null and void, illegal and of no effect."

And the allegation is made on page 4, not that the certificates showed on their face that they were locatable on any land of the State, and, hence, null, and that, as a matter of fact, they were locatable on any land, and for that reason were null.

The foregoing comprise absolutely all the allegations of the petition on this subject. We challenged counsel for plaintiff in the Courts **a quibus** to point out where, in his petition, he had alleged these patents to be void on their face, and he pointed out, on page 19 of his brief in the State Supreme Court, the foregoing quotation from page 13.

Let us stop now and analyze the allegations thus relied on. It is that patents issued, and that either the patents referred, on their face, to Act 23 of 1880, or referred to a certificate, and that, if one looked up the certificate (**de hors** the patent) he would find on it a reference to Act 23 of 1880.

Let us note now four things:

(1) The patents were issued by the Register and the Governor. It is not denied, and it cannot be denied, that the Register and the Governor had authority to issue patents for these particular lands, if legal tender money

or scrip were paid for them. Plaintiff is asking these same officers to issue such patents right now.

(2) It is not denied, and it cannot be denied, that John McEnery was entitled to some scrip. **42 An. 209**, opinion of Louisiana Supreme Court, transcript, p. 89:

> "In our opinion we referred to the case cited (**42 An. 209**) for the purpose of showing that under the contract made pursuant to Act 23 of 1880, scrip and patents might have lawfully issued to John McEnery for his interest in lands **actually recovered** by him for the State of Louisiana."

(3) It is not denied, and it cannot be denied, that the scrip to which McEnery was entitled was good legal tender money, properly receivable in payment for the lands he recovered. **42 La. An. 209.** Opinion Louisiana Supreme Court, rehearing, quoted **supra**, transcript, p. 89.

(4) Act 23 of 1880 authorized McEnery to recover for the State, and, hence, entitled him to scrip for, one-half of "lands situated in the State of Louisiana and donated by several acts of Congress to the State for divers purposes" (Vid, of transcript, p. 34). The lands in controversy are alleged by plaintiff (page 1) to have been donated to the State by Congress; therefore, these identical lands might have been recovered by McEnery from the United States.

With these premises before us, let us turn back to the allegations relied on by plaintiffs as a statement by them that these patents were void on their face. They are that the patents refer, on their face, to Act 23 of 1880, or to a certificate or scrip number, which scrip showed on its face

it was issued under Act 23 of 1880. Let us first take the case of the patent referring to Act 23 of 1880. This reference on the face of the patent would charge one with notice that the patent had come through Act 23 of 1880. If every patent issued under Act 23 of 1880 were alleged to be void, it might well be argued that a reference to that fatal act would render a patent void on its face, but such is neither the fact nor the allegation. **It is not denied that some good patents could issue under that act.** In fact, in **42 La. An. 209**, the Supreme Court of Louisiana actually made mandamus peremptory ordering the issuance of certain patents under that act. Hence, when one received a patent referring to that act he would, according to plaintiff's own contention, be called upon to investigate and to discover "whether the land covered by the patent had or had not been recovered by Mr. McEnery." Surely, it cannot be contended that that information appeared on the face of the patent. No patent has been alleged to have had written across it the legend, "which land was not recovered by McEnery." The land patented was land of the same character as that recovered by McEnery—namely, "lands situated in the State of Louisiana and donated by several acts of Congress to the State for divers purposes." And so, when a person received a patent, what course would he pursue? He would look at Act 23 of 1880 and find that McEnery was authorized to recover, and probably did recover, portions of all the various kinds of land; hence, he might have recovered the land embraced in the patent. He would look at the decision of the highest tribunal of the State: **McEnery vs.**

Nicholls, 42 La. An. 209, construing that statute, and find that that tribunal found that statute constitutional, legal and binding; he would find that the Governor and Register not only were authorized to issue patents for land under that act, but would be compelled by mandamus to do so, and had been so compelled to issue patents under that particular act by the highest tribunal in the State. In order, therefore, to discover whether the patent in his hands was good, an individual would, according to the allegations of the petition of this plaintiff, be obliged to get from somewhere a list of all the land recovered by McEnery and check same over so as to see whether the land covered by his patent were on it. **Not only, therefore, was the patent not void on its face,** but its validity **vel non** was a matter which could be determined only by intricate research. The position created by plaintiff's allegation then is, that these patents were good or bad, according as the land embraced within them was land recovered by McEnery or not, and the patent did not, on its face, supply that information. That information was **de hors** the patent, and the alleged invalidating information being **de hors** the patent, the patent is valid on its face. Nor is the situation any better if the patent referred on its face to a certain certificate number and the certificate referred to Act 23 of 1880. In fact, the situation was only one degree worse, in that it compelled the holder of the patent to look first to the certificate to get the information that same came through Act 23 of 1880, and having obtained that information he was exactly in the situation

of the holder of a patent which refers on its face to Act 23 of 1880, for he would look at Act 23 of 1880 and find what the Supreme Court of the State found in the **McEnery-Nicholls case, 42 La. An. 209,** that McEnery, under Act 23 of 1880, was entitled to certificates, and that he was entitled to locate those certificates on certain land of the State of the same kind and character as that covered by the patent in question, and just as in the case of the patent holder, the certificate man would be compelled to look **de hors** the entire record to discover whether or not the land covered by his patent and certificate was included in the list of lands recovered by McEnery.

McMichael vs. Murphy, 97 U. S. 304:

> "A settlement or entry on public land already covered of record by another entry valid upon its face does not give a second entryman any right in the land, notwithstanding the first entry may subsequently be relinquished or ascertained to be invalid by reason of facts **de hors** the record of such entry."

Jenkins vs. Gibson, 3 An. 204:

Patent attacked on ground that alleged settler had not lived on land. Held this was **de hors** the record, and patent valid on its face and not subject to collateral attack.

See how close the analogy is to this case. There, by proving that the settler did not live on the land, he can (soidisant) avoid the patent. Here by proving that McEnery did not recover the land he can (soi disant) avoid the patent. There, no collateral attack was allowed. Here, shall it be permitted?

In its final analysis plaintiff's contention is what? It is that McEnery scrip was used to pay for land, and that McEnery scrip is counterfeit money. He is rather in the position of a person who alleges that the purchaser and patent holder of State land paid for it in counterfeit greenbacks. Our answer is that such is not an invalidity as appears upon the face of the patent, and that, therefore, the patents are valid on their face and, being so, segregate the land from the public domain, and leave objector without interest in the matter, or cause or right of action to have said patents annulled. **(Smith & Wallace vs. Crandall, 118 La. 1072; McMichael vs. Murphy, 197 U. S. 304)**, and we are confirmed in this belief by what happened in the **McEnery vs. Nicholls case 42 An. 209.** In that case apparently McEnery came before the Court with some of this scrip (not here alleged void on its face), and asked for a mandamus to compel the Governor and Register to deliver patents to him, and this Court not only failed to note that the scrip was void on its face, but they made the mandamus peremptory and ordered the patents to issue. And what we seriously ask this Court to consider is:

> "How did it happen, if these certificates be void on their face, and patently invalid, that the five Justies of the Supreme Court of Louisiana not only failed to notice such invalidity, but ordered patents to issue?"

AS PLAINTIFFS ASK FOR NO RELIEF, THIS IS A MERE MOOT CASE.

Plaintiffs in this proceeding pray only to have the act declared unconstitutional, and for an injunction to restrain the Register of the Land Office from carrying out the provisions of that act. They do not ask to have the outstanding patents or certificates declared void. They do not ask that patents ultimately issue to them or that their applications therefor be recognized. **In fact they ask for no relief or benefit for themselves.**

The question is, therefore, a purely academic one, and the case, a moot case, which, if decided in favor of plaintiffs, could decree nothing in their favor.

> "An action can only be brought by one having a real and actual interest **which he pursues.**" * * *
> **Code of Practice of La., Art. 15.**

It does not help the plaintiffs to show that they have averred they made applications for the land, and, therefore, have the right to ask that the act be declared unconstitutional. They must not only have an actual interest, but must, in the proceedings brought, pursue it—"which he pursues"—is the language of the Code of Practice.

One must have a right and interest to sustain the plea of unconstitutionality of the law.

> **Moore vs. New Orleans, 32 An. 727; N. O. Gas Light Co. vs. Hart, 40 An. 474.**

> "A law unconstitutional because it impairs the obligations of contracts, is only null so far as the rights of those persons are concerned the obligations of

whose contracts are thereby impaired. As to **all other rights** and all **other** persons, it is entitled to full force and effect."

Moore vs. City of New Orleans, supra; Baker vs. Braman, 6 Hill 47.

No other interest is shown by plaintiffs in injunction not the owner or otherwise interested in the property seized.

Lewis vs. Savings Institution, 33 An. 1463; 3 An. 593.

Or attempting to control administration of assets.

Mudge vs. Commissioners, 10 R. 460.

The only decree that this Court can render in this case is one declaring Acts 85 and 86 of 1906 unconstitutional as violative of the Federal Constitution, and enjoining the Register of the State Land Office from accepting $1.50 per acre for the lands described.

This did not escape the notice of the Supreme Court of Louisiana, for, in its opinion (Rec., p. 84), it says:

"Plaintiffs took no legal proceedings against the Register to compel him to accept the price and to issue the proper certificate of entry."

Cui Bono? Non constat, that plaintiffs will ever claim the lands. If their prayer is granted, the State cannot receive the money which certain parties are about to pay her (as averred in the petition), and yet plaintiffs themselves may never take the lands, and do not ask the Court to recognize in them any right whatever in, to, or against, such land.

VI. *

Restitutio in Integrum Non Fit.

It is to be observed that the petition of the plaintiff attacks the title of the patentees of the land. There is no effort to return to the patentees the values which they paid; no suggesion that any such return of value should be made. Throughout the entire petition there is a complete disregard of the equitable doctrine of **restitutio in integrum.** The scrip received by McEnery or his certificates, undoubtedly had a value. The owners of that scrip or those certificates, the assignees of McEnery, parted with that value when they acquired the lands and the plaintiff now proposes to take away from the patentees their lands, without restoring to them the value which they paid.

In connection with this, we direct attention to the language of the Supreme Court of Louisiana, record, page 84, as follows:

> "Conceding that such scrip was illegal, nevertheless, the State received some consideration for the patents, because the scrip so located operated as a relinquishment by John McEnery of his interest in the same number of acres of land recovered by him under his contract. The State for more than a quarter of a century acquiesced in the issuing of patents based on McEnery scrip and took no adverse action until 1906, long after the lands represented by the patents had passed into the hands of third persons."

*Point VI is urged on behalf of Intervenors solely and is not concurred in by counsel for the State of Louisiana.

That is to say, the lands represented by the patents have been sold by the State to other parties and could not now be delivered to John McEnery, his heirs or assigns, even if it were necessary.

This we advance as a corollary to the proposition that only the State can institute proceedings to annul the titles, and the State, if it sought to annul the patents, must restore the patentees to the situation in which they were before they parted with their certificates. This being impossible, even the State has placed itself in such a position that it has no right now to institute an action of rescission. Much less, therefore, can a third party such as the plaintiff in this proceeding, do so.

State vs. Hoerly, Hunn & Joyce, 124 La. 772 (50 So. 772).

QUESTION RES JUDICATA.

This brings us to the petition herein for writ of error, page 90. That petition was filed by the original plaintiff and contains this allegation:

> "That the entry of the lands in question with certificates that were null and void on their face, and which entry could only be made under Sections 4 and 5 of Act 75 of 1880, after actual money had been paid into the State Treasury, was and is absolutely null and void, being in defiance of said Sections 4 and 5 of Act 75 of 1880, and in those cases where patents were issued on such certificates, as shown on the face of the patents, such patents were, and are, absolute nullities, * * * and do not segregate the lands from the public domain."

Plaintiff says, in so many words: If a man pays for land entered under Act 75 of 1880 with a certificate received under Act 23 of 1880, the certificate is void; the entry is void and the patent does not segregate the land from the public domain.

Obviously, the questions presented are pure questions of construction of State Statutes, affecting public lands and constituting rules of property. Whether a certificate issued to John McEnery under Act 23 of 1880 is valid, void or voidable, turns entirely on the construction of Act 23 of 1880. Whether the use of such a certificate as the purchase price of public land entered under Act 75 of 1880 is valid, voidable or void, turns entirely(even according to plaintiff), on the construction of a State statute (Act 75 of 1880), affecting public lands and constituting a rule of property. Plaintiff alleges that certain persons have done thus and so, and that their actions were not sufficient compliance with Act. 75 of 1880, to segregate the land from the public domain. The Supreme Court of Louisiana has construed the Louisiana statute in question and has held that in doing so, these persons sufficiently complied with that statute to segregate the lands from the public domain. Your Honors are asked to review and reverse this finding.

The rule, as we understand it, was early laid down by Chief Justice Marshall, that in the following cases, among others, the Supreme Court of the United States would be **governed** by the ruling of the State Court:

1. When the State Court was construing its own statute.

2. When the State Court was promulgating a rule of property.

3. When the State Court was dealing with the public lands of the State.

On this subject the decisions are as follows:

131 Fed. 689, Circuit Court of Appeals, Sixth Circuit, Richards, Judge:

> "Where an action in the Federal Court depends upon the construction of a State statute providing for the sale of State lands, the Federal Court is required to adopt the construction placed on the statute by the highest Court of such State."

In the body of this case, the Court reviewed the jurisprudence of Kentucky construing a statute of that State. and finally said:

> "Whatever view we might be disposed to take of the proper interpretation of this act with respect to the matter involved in this case, if it were before us as an original question, our examination of the foregoing cases decided by the Court of Appeals of Kentucky constrains us to the conclusion that that Court in the exercise of its rightful authority has settled its construction and settled it in favor of the validity of the patent before us. The judgment of the lower Court is, therefore, reversed."

At page 690 they said, after quoting the statute:

> "The construction of this statute, the ascertainment whether it does or does not prohibit the issue of a patent for more than 200 acres, is obviously a Kentucky question. The Federal Courts follow the rule laid down by Chief Justice Marshall in **Polk's Lessee vs. Wendall, 9 Cranch, 87:**

"'In the cases depending on the statutes of a State, and more especially in those respecting title to land, this Court adopts the construction of the States where that construction is settled and can be ascertained."

Polk's Lessee vs. Wendall, 9 Cranch, 98, as quoted **supra.**

Manley vs. Park, 187 U. S. 547:

"The construction given by the Supreme Court of Kansas to the Kansas statutes, holding that real estate situated in that State, the title to which was vested in a nonresident executor to whom letters testamentary had been issued by a Court of another jurisdiction, may be attached and sold in an action of debt against the nonresident executor, is binding on this Court. And, treating the statutes as having such import as a decision upon a matter of local law, this Court must determine whether, as so constructed, they violate the Federal right involved."

Applying this doctrine to the case at bar this Court would say:

"The local Supreme Court has held on a matter of local land law that the two acts of 1880 were not so violated as to make the patents issued thereunder void on their face, and the land was therefore segregated from the public domain. Taking this construction as a fact, and finding that at the time of Frellsen's entry the land was segregated from the public domain, we are asked to discover whether by his entry Frellsen acquired any vested right, and if he acquired such a vested right, whether the State's action in permitting the entryman whose entry had segregated the land to perfect that entry was a deprivation of Frellsen's vested right in violation of the Constitution of the United States."

Iowa Life Ins. Co., vs. Lewis, 187 U. S. 336:

"This Court will adopt the construction of the State Courts of a State statute as to the necessity of a demand being made before the commencement of an action."

Y. & M. V. R. R. Co. vs. Adams, 181 U. S. 581:

"Held that as the Supreme Court of Mississippi had decided that all the taxes had accrued after the consolidation of October 24th, and the company had thereby lost its exemption, and as this was the construction of the general tax laws of the State which were complex and difficult of interpretation, this Court would accept that construction and deny the petition for a rehearing."

Cargill vs. Minnesota, 180 U. S. 453:

"Held that the highest Court of the State having decided that the provision requiring a license was separable from other provisions, it was the duty of the Federal Court to accept that interpretation of the statute."

Hoge vs. Magnes, 87 Fed., 357, The Court said:

"In construing State statutes relative to titles to land, the Federal Courts follow the decision of the highest judicial tribunals of the respective States in which the lands are situated."

Christy vs. Pridgeon, 4 Wall. 203, the Court said:

"This law of 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas after the independence of that country, a local law of the new State—as much so as if it had originated in her Legislature. It had at the time no operation in any portion of what then constituted the United States. The interpretation

therefore placed upon it by the Federal Court of that State **must**, according to the established principles of this Court, be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be our opinion of its original soundness. Nor does it matter that in the courts of other States carved out of territories since acquired from Mexico a different interpretation may have been adopted. If such be the case, the Courts of the United States will in conformity with the same principle, follow the different rulings so far as it affects titles in those States. The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different States to a similar local law, that law in effect becomes by the interpretations, so far as it is a rule for our action, a different law in one State from what it is in the other. That the statute laws of the States, says Mr. Justice Johnson, in delivering the opinion of this Court, in **Shelby vs. Guy, 11 Wheat, 367,** must furnish the rule of decision of this Court as far as they comport with the Constitution of the United States, in all cases arising within the respective States, is a position that no one doubts. Nor is it questionable that a fixed and received construction of their respective statute laws in their own Courts makes in fact a part of the statute law of the country, however we may doubt the propriety of that construction."

In the case at bar then, this Court is trebly bound by the decision of the State Supreme Court because that Court was construing its own Statute, enunciating a rule of property, and dealing with the public land of the State. The State Court was passing on the question

whether the State's public lands had been withdrawn by the State from sale, had been segregated from the public domain; whether a local statute had been observed or had been so disregarded as to strike the proceedings with nullity, all of which was a matter of purely local concern, a local statute, local public lands, a local rule of property: an ideal illustration of a case in which the decision of the local tribunal should be followed. The State Court said in its opinion, Tr., p. 89:

> "In our opinion we referred to the case cited for the purpose of showing that under the contract made pursuant to Act 23 of 1880, scrip and patents might have lawfully issued to John McEnery for his interest in lands actuallly recovered by him for the State of Louisiana. Our conclusion was that the mere reference in patents to Act 23 of 1880 did not show that the same had been issued in violation of law. But the gist of our decision is that patents having issued, the lands were thereby segregated from the public domain and were no longer subject to entry. There is no authority or precedent that would warrant this Court to decree such patents to be null and void in a collateral proceeding to which the present holders of the patents are not parties. Our understanding of the law is that only the State can sue to cancel or annul such patents issued at a time when no third persons had any inceptive right, legal or equitable, in the lands conveyed by such instruments."

In the opinion on the original hearing (p. 84) the Supreme Court of Louisiana say:

> "Boiled down the alleged absolute nullity is that the Register received in payment of the price of the

lands in question McEnery scrip, 'locatable on any public land,' which scrip was issued contrary to the proviso of Act 23 of 1880. * * * * *.

"The alleged nullity is **de hors**, the patents and affects only the consideration received by the State when she parted with the title. If such scrip had been located on lands recovered by John McEnery, the transaction would have been perfectly legal. Its improper location on public lands not so recovered was a matter discoverable only by inquiry and investigation."

The State Court had already held **(McEnery vs. Nicholls, 42 An. 209)**, in 1890, that the Register had a right to issue certificates to John McEnery and same was a rule of property which they thus affirmed, and a ruling on the faith of which those titles had stood and been transferred.

Your Honors are asked to review this finding. You are asked to say to the Supreme Court of Louisiana: Gentlemen, we have construed your local statute and we disagree with you. We find that your Governor had no right to issue scrip-certificates to McEnery. Your ruling to that effect made in 1890, is erroneous and your present ruling following that rule of property is erroneous, and must be upset. We find that your local Act 75 of 1880, was so disregarded that you were wrong in concluding that the patents issued under it by the State officials segregated the State's land from the public domain; the contrary is the case. Those patents are void on their face; we can tell at a glance that they issued for land which McEnery did not recover. Those patents do not segregate this

land fromt he public domain, but, on the, contrary, leave the State of Louisiana continuing to offer them for sale to such an extent that any chance buyer by accepting that offer acquires a vested right in them.

We submit that to state such a proposition is to expose its inherent weakness and destroy its force. Your Honors would make no such finding, even if you doubted the correctness of the State Court's decision, but would say that inasmuch as the point involved the construction by a Louisiana Court of a Louisiana statute governing public lands and constituting a Louisiana rule of property, you would consider that the findings of the Louisiana Supreme Court should be conclusive.

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March, 1910.

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 129.

J. W. FRELLSEN & CO., A PARTNERSHIP COMPOSED OF JOSEPH W. FRELLSEN AND JAMES D. HILL, PLAINTIFFS IN ERROR,

vs.

A. W CRANDALL ET AL., REGISTER OF THE STATE LAND OFFICE ET AL.

Brief on Behalf of H. J. Lutcher, W. H. Stark, Jno. Dibert, E. W. Brown, F. H. Farwell, and Vermillion Development Company, Intervenors.

P. PUJO,
J. BLANC MONROE,
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Brief on Behalf of H. J. Lutcher, W. H. Stark, Jno. Dibert, E. W. Brown, F. H. Farwell, and Vermillion Development Company, Intervenors.

If the Court Please:

On behalf of the undersigned intervenors be it first said that they do adopt and ratify and assume as their own the brief heretofore filed herein by Walter Guion, attorney for defendants, and by the undersigned counsel, among others as counsel, and they do specifically adopt, concur in, and ratify that portion of said brief at page 43 et seq., Chapter VI, entitled and reading:

Restitutio in Integrum non fit.

It is to be observed that the petition of the plaintiff attacks the title of the patentees of the land. There is no effort to return to the patentees the values which they paid; no suggestion that any such return of value

should be made. Throughout the entire petition there is a complete disregard of the equitable doctrine of **restitutio in integrum.** The scrip received by McEnery or his certificates undoubtedly had a value. The owners of that scrip or those certificates, the assignees of McEnery, parted with that value when they acquired the lands and the plaintiff now proposes to take away from the patentees their lands, without restoring to them the value which they paid.

In connection with this, we direct attention to the language of the Supreme Court of Louisiana (Rec., p. 84), as follows:

> "Conceding that such scrip was illegal, nevertheless, the State received some consideration for the patents, because the scrip so located operated as a relinquishment by John McEnery of his interest in the same number of acres of land recovered by him under his contract. The State for more than a quarter of a century acquiesced in the issuing of patents based on McEnery scrip, and took no adverse action until 1906, long after the lands represented by the patents had passed into the hands of third persons."

That is to say, the lands represented by the patents have been sold by the State to other parties and could not now be delivered to John McEnery, his heirs or assigns, even if it were necessary.

This we advance as a corollary to the proposition that only the State can institute proceedings to annul the titles, and the State, if it sought to annul the patents, must restore the patentees to the situation in which they were before they parted with their certificates. This being impossible, even the State has placed itself in such a position that it has no right now to institute an action of rescission. Much less, therefore, can a third party, such as the plaintiff in this proceeding, do so.

State *vs.* Hackley, Hume & Joyce, 124 La., 772 (50 So., 772).

We can not too strongly emphasize the justice of this plea. Our ancestors in title had a letter of credit which entitled them to something. They surrendered that letter of credit to the State of Louisiana and received these lands in lieu thereof. Plaintiff now proposes that the State of Louisiana arbitrarily, and ex parte, take back the land and keep the letter of credit.

We as intervenors most strenuously object to this method of procedure. We insist that the State must first bring against us a suit to set aside this contract; in which suit we will have an opportunity to be heard to set up the reasons which to us seem unanswerable why the State can not set aside these patents at all. And we further insist that even should that suit be decided adversely to our contention, the State must at all events render back what she received before taking back what she gave.

THE POINT OF VIEW OF INTERVENORS.

Intervenors are not John McEnery. They are not even the persons who located the scrip issued to McEnery and caused the patents to issue thereon for the lands in question. *But they are third persons who bought the lands on the public market in the usual course of business, in good faith, paying its full value in cold cash.* They have held this land for from twenty to twenty-five years. During that time the State of Louisiana has assessed it to them, has collected taxes on it from them, and has continuously treated them as its owners.

And now forsooth, comes plaintiff, a rank outsider, a man in nowise connected with the land or the State, a man whose sole motive is land speculation, who desires to buy some 100,000 acres of land for $1.50 per acre and sell it for $30 to $40 per acre, clearing thereby three or four millions of dollars in gain, with which he proposes

to enrich himself at the expense of intervenors, who bought the land for its full market value and at the expense of the State. What proposition does this adventurer advocate?

He urges the State of Louisiana suddenly to change front, to cease to treat intervenors as the owners of the land. To go further than that, *i. e.*, to proceed without *notice to the land holders*, and without affording them a hearing of any sort; to decree by some fell *ipse dixit*; that these solemnly executed patents on the faith of which we have put out our money are void, and that we, our good faith, our vested interests, our years of paid taxes, are without so much as the shadow of a right in the premises.

And why should the State take this action? In order, says plaintiff, to put into my pockets some four millions of unearned dollars. In other words, the State must enter into a broil with the landowner, must go into the public treasury and refund to that landowner twenty years taxes and the original scrip if possible, *things largely exceeding in value the price which* Frellsen proposes to repay to the State. She must do this in order to let Frellsen enjoy this unearned and undeserved gain. The State must contribute to this four millions and these intervenors must make up the deficit even though it be ruinous to them to do so. We submit there is no advantage to the State and no justice to either it or the intervenors in such a proposition, and we submit that the right of plaintiff to insist on such an action does not exist.

Plaintiff insists that the argument that the State must make restitution before setting aside patents issued for value received, is not before the court and hence requires no answer from him. This positionwhich is to be found in his reply brief (p. 22), shows how fallacious the foundation upon which his whole argument rests. He would have your honors hold that the State of Louisiana can

and should disregard our patents and take away our lands before making any restitutio in integrum to us, but when your honors answer him by suggesting that revocation of these patents can in no case take place until restitutio in integrum is made, he replies "your honors can not consider that phase of the legal situation because it was not called to your attention *by the State.*"

Whether it was called to your attention by the State or not, this side of the question is there, and we take it that this court would have discovered it and considered it even though it had been suggested by no one, because this court looks at questions from all sides before finally passing upon them.

And so the contention of counsel that the arguments of intervenor must be disregarded, serves only one good purpose, namely, that of throwing into the spotlight the ex parte nature of plaintiff's proposed action. He would have our patents set aside, our property deeded to others, our right to restitutio in integrum passed upon and invaded without citation to us or notice to us to defend ourselves. And if we come into court and voluntarily suggest that we are entitled to a hearing and to a restitutio in integrum before these things are done, we are told that our arguments and prayers need not be answered and considered, because this is an ex parte proceeding as far as we are concerned and therefore we have no interest in it. Such is not justice. Such is not and can not be the law. Such will not and can not be the finding of this tribunal.

A. P. PUJO,
J. BLANC MONROE,
Attorneys for H. J. Lutcher, F. H. Farwell, W. H. Stark, Jno. Dibert, E. W. Brown, and Vermillion Development Company, Intervenors.

MARCH, 1910.

FRELLSEN AND COMPANY *v.* CRANDELL, REGISTER OF THE STATE LAND OFFICE OF LOUISIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 129. Argued March 7, 8, 1910.—Decided April 4, 1910.

Whether a patent is wrongfully issued or can be set aside is a matter to be settled between the State and the patentee, but no individual is authorized to act for the State.

Even if the State could set aside a patent for having been issued on illegal or inadequate consideration the matter is between it and the patentee; and, until set aside, one tendering the statutory price does not thereby become entitled to receive such land from the State, nor does the tender create a contract with the State within the protection of the contract clause of the Federal Constitution.

Where the state court so holds, public land of a State, as is the case of public land of the United States, held under patent or certificate of location, is not, until such patent or certificate be set aside at the instance of the State, subject to other entry or purchase.

In the matter of sale and conveyance each State may administer its public lands as it sees fit so long as it does not conflict with rights guaranteed by the Federal Constitution; nor is any State obliged to follow the legislation or decisions of the Federal Government or of any other State.

120 Louisiana, 712, affirmed.

CONGRESS, by an act entitled "An act to Aid the State of Louisiana in Draining the Swamp Lands therein," approved March 2, 1849 (9 Stat. 352, c. 87), granted to that State "the whole of those swamp and overflowed lands" in her borders, "which may be or are found unfit for cultivation." See also act of September 28, 1850, 9 Stat. 519. In 1880 the general assembly of the State of Louisiana, by an act known as "Act 23 of 1880," approved March 8, 1880 (Laws La., 1880, c. 84, p. 25), authorized the governor of the State to institute proceedings to recover all of those lands not already conveyed to the State, or, if improperly failed to be conveyed, their value in money or government scrip, "provided, that the State shall

incur no cost or expense in the prosecution of the said claims other than an allowance to be made by the governor out of the lands, money or scrip that may be recovered." On March 20, 1880, the governor made a contract with John McEnery to recover from the United States the unconveyed balance of the lands, or their value in money or scrip, and agreed to pay him "fifty per centum of the lands, money or scrip recovered, to be paid as provided in said Act 23." It also provided: "Where lands in kind are recovered, the compensation as aforesaid, of the said McEnery, shall be represented in scrip or certificates, to be issued by the register of the land office of the State, and locatable upon any lands owned by the State." A large amount of lands were recovered, and the register of the state land office issued to John McEnery certificates in terms made locatable upon any vacant land granted to the State by the act of Congress heretofore referred to. These certificates were sold and assigned by McEnery, and his assignees located them upon public lands, some of which had not been recovered by McEnery under his contract. To some of the assignees patents were thereafter issued, while others held simply certificates of location. By Act 106 of 1888 (Laws La., 1888, p. 171) Act 23 of 1880 was repealed, and by § 2 of the repealing act it was provided "that the act or agreement made between Louis A. Wiltz, governor of the State, and John McEnery, made March 20, 1880, purporting to be under the authority of said Act No. 23, is hereby abrogated and terminated." This repealing act took effect January 1, 1889. By Act No. 125, approved July 8, 1902 (Laws La., 1902, p. 209), it was provided that the swamp and overflowed lands donated by Congress to the State should be subject to entry and sale at the rate of $1.50 per acre. On July 7, 1906, the legislature passed Act No. 85 of 1906 (Laws La., 1906, p. 141), declaring "that present holders and owners of patents for public lands, issued by the State of Louisiana, their heirs, assignees or transferees, shall be confirmed as applicants for said lands, from the date of the issuance of said patents, where the said patents

were not paid for in money, but were paid for by certificates or warrants for scrip, which were not legally receivable in payment for such patents, and authorizing such present holders and owners, their heirs, assignees or transferees, of said patents to validate and perfect their title to the lands covered by said patents, or to any part or subdivision of such lands, within one year from date of passage of this act, by paying therefor, in cash, the price of one dollar and fifty cents per acre." The act further provided that upon payment of such amount "the said patents shall be valid and legal for all purposes, as if payment therefor had been made in cash at the date of their issuance."

Petitioners, claiming that the location of these certificates upon lands not recovered by McEnery and the issuance of patents therefor were illegal, tendered on March 28, 1905, to the proper officers $1.50 per acre for a large body of lands which were covered by these certificates and patents. They demanded that warrants should be issued to them for the lands, which was refused. On July 11, 1906, they filed their petition in the Twenty-second Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, averring that they were the first and only applicants for said lands under the provisions of said Act No. 125 of 1902, or of any other law of the State since the date of the issuance of said illegal certificates and patents, and that by making the legal tender they became vested with the right to acquire said lands.

The District Court sustained the exception of no cause of action and entered judgment dismissing the suit. This judgment was affirmed by the Supreme Court of the State, 120 Louisiana, 712, and from that court was brought here on writ of error.

Mr. P. M. Milner, with whom *Mr. H. G. Morgan* was on the brief, for plaintiffs in error:

While a voidable patent might segregate land from the public domain, a patent null and void cannot have that effect.

In *Emblen* v. *Lincoln Land Co.*, 184 U. S. 660, *Re Emblen*, 161 U. S. 52, and *Small* v. *Crandell*, 118 Louisiana, 1052, the patents were not actually null and void. *United States* v. *Throckmorton*, 98 U. S. 70, can also be distinguished. If, however, the patent is actually null and void the land is not segregated but remains open to entry. *St. Louis Smelting Co.* v. *Kemp*, 104 U. S. 645; *Doolan* v. *Carr*, 125 U. S. 625.

The patents issued for McEnery scrip being void, plaintiffs in error acquired a vested interest in the land covered by such patents when they made formal application and tender in compliance with the law of the State. *Pennoyer* v. *McConnaughy*, 140 U. S. 1.

The McEnery certificates were issued in pursuance of a contract of compensation and related solely to the lands recovered through McEnery. Making them locatable on any public lands including those not recovered through him was illegal and the locations made thereunder on land not so recovered were actually void and did not operate to segregate.

Defendants in error rely on *Western R. R. Co.* v. *United States*, 108 U. S. 510; *McLaughlin* v. *United States*, 107 U. S. 526; *United States* v. *San Jacinto Co.*, 125 U. S. 273; but in none of these cases was the patent void. And see *United States* v. *Stone*, 2 Wall. 535, in which the effect of a void patent is referred to. See also *Mowry* v. *Whitney*, 14 Wall. 439; *McMichael* v. *Murphy*, 197 U. S. 304. *Goodloe* v. *Register*, 47 La. Ann. 568, can also be distinguished. In *McEnery* v. *Nichols*, 42 La. Ann. 209, no scrip was before the court and its invalidity was not noticed, and the only lands involved in that case were those recovered by McEnery.

Mr. J. Blanc Monroe, *Mr. R. G. Pleasant* and *Mr. A. P. Pujo*, with whom *Mr. Walter Guion*, Attorney General for the State of Louisiana, *Mr. Bernard Titche*, *Mr. Leland H. Moss*, *Mr. Wynne G. Rogers*, *Mr. C. D. Moss*, *Mr. C. A. McCoy*, *Mr. R. L. Knox*, *Mr. E. D. Miller*, *Mr. Harry H. Hall* and *Mr. Monte M. Lemann* were on the brief, for defendants in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court, after reading the following memorandum:

This opinion, including the preliminary statement, was prepared by our Brother Brewer, and had been approved before his lamented death. It was recirculated and again agreed to, and is adopted as the opinion of the court.

Petitioners contend that by their tender they made a contract with the State for a conveyance of the lands in controversy; that this contract was broken, and that they were deprived of their rights thereunder by the legislation of the State and the action of its officers in pursuance thereof; that thus a Federal question arises under Art. I, § 10, of the Constitution of the United States, which forbids a State to pass a "law impairing the obligation of contracts." Their argument is briefly this: The lands were not obtained by McEnery under his contract with the State; the statute authorizing that contract provided that his payment should be solely out of the lands obtained by him from the United States. Notwithstanding this limitation, certificates were issued to him authorizing location upon any lands included within the grant of Congress by the act of 1849, and they were in fact located upon the lands in controversy—lands which were not obtained by McEnery; that this location, even when followed by patent, did not segregate these lands from the public domain of the State, and they remained therefore open to purchase by any one complying with the statutes; that petitioners were the first and only parties who tendered to the State the prescribed price; that thereby they acquired a vested right to a conveyance by the State of the legal title.

But it is not contended that the patents were not signed by the proper officers and in due form to convey the title of the State to the patentees. It is not suggested that McEnery received any greater amount of lands than he was entitled to receive under his contract, and it does not appear from the

record that the patents, on their face, disclosed any invalidity in the title conveyed. While an examination of the records would, if the facts stated in the petition are true, show that they were improperly issued yet this could be ascertained only by looking beyond the face of the patent. Now, whether the patents were wrongfully issued or could be set aside was a matter to be settled between the State and the patentee. The State undoubtedly received something, for the acceptance of every McEnery certificate released the State *pro tanto* from its obligation under the contract to McEnery. Whether it should remain satisfied with that payment or not was for the State to determine. If it were not satisfied it could take proper proceedings to set aside the patent, but no individual was authorized to act for the State.

The rule in respect to the administration of the public domain of the United States is well settled. In *Doolan* v. *Carr*, 125 U. S. 618, 624, Mr. Justice Miller said:

"There is no question as to the principle that where the officers of the Government have issued a patent in due form of law, which on its face is sufficient to convey the title to the land described in it, such patent is to be treated as valid in actions at law, as distinguished from suits in equity, subject, however, at all times to the inquiry whether such officers had the lawful authority to make a conveyance of the title. But if those officers acted without authority; if the land which they purported to convey had never been within their control, or had been withdrawn from that control at the time they undertook to exercise such authority, then their act was void—void for want of power in them to act on the subject-matter of the patent, not merely voidable; in which latter case, if the circumstances justified such a decree, a direct proceeding, with proper averments and evidence, would be required to establish that it was voidable, and should therefore be avoided."

In *Hastings &c. Railroad Company* v. *Whitney*, 132 U. S. 357, 363, Mr. Justice Lamar, who had been Secretary of the

Interior, discussed the question of a homestead entry, and, after referring to *Kansas Pacific Railway Co.* v. *Dunmeyer*, 113 U. S. 629, added:

"Counsel for plaintiff in error contends that the case just cited has no application to the one we are now considering, the difference being that in that case the entry existing at the time of the location of the road was an entry valid in all respects, while the entry in this case was invalid on its face, and in its inception; and that this entry having been made by an agent of the applicant, and based upon an affidavit, which failed to show the settlement and improvement required by law, was, on its face, not such a proceeding in the proper land office, as could attach even an inchoate right to the land.

"We do not think this contention can be maintained. Under the homestead law three things are needed to be done in order to constitute an entry on public lands. . . . If either one of these integral parts of an entry is defective, that is, if the affidavit be insufficient in its showing, or if the application itself is informal, or if the payment is not made in actual cash, the register and receiver are justified in rejecting the application. But if, notwithstanding these defects, the application is allowed by the land officers, and a certificate of entry is delivered to the applicant, and the entry is made of record, such entry may be afterwards canceled on account of these defects by the Commissioner, or on appeal by the Secretary of the Interior; or, as is often the practice, the entry may be suspended, a hearing ordered, and the party notified to show by supplemental proof a full compliance with the requirements of the department; and on failure to do so the entry may then be canceled. But these defects, whether they be of form or substance, by no means render the entry absolutely a nullity. So long as it remains a subsisting entry of record, whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from the public domain, and therefore precludes it from subsequent grants."

In *In re Emblen*, 161 U. S. 52, 56, Mr. Justice Gray thus stated the law:

"After the patent has once been issued, the original contest is no longer within the jurisdiction of the land department. The patent conveys the legal title to the patentee; and cannot be revoked or set aside, except upon judicial proceedings instituted in behalf of the United States. The only remedy of Emblen is by bill in equity to charge Weed with a trust in his favor. All this is clearly settled by previous decisions of this court, including some of those on which the petitioner most relies. *Johnson* v. *Towsley*, 13 Wall. 72; *Moore* v. *Robbins*, 96 U. S. 530; *Marquez* v. *Frisbie*, 101 U. S. 473; *Smelting Company* v. *Kemp*, 104 U. S. 636; *Steel* v. *Smelting Company*, 106 U. S. 447; *Monroe Cattle Company* v. *Becker*, 147 U. S. 47; *Turner* v. *Sawyer*, 150 U. S. 578, 586."

See also *McMichael* v. *Murphy*, 197 U. S. 304, 311.

Obviously, in this case the Supreme Court of Louisiana followed the practice obtaining in respect to the public lands of the United States. But if it had not and had declared simply the law of the State of Louisiana its decision would, doubtless, be controlling on this court, for, in the matter of the sale and conveyance of lands belonging to the public no one State is obliged to follow the legislation or decisions of another State, or even those of the United States, but may administer its public lands in any way that it sees fit, so long as it does not conflict with rights guaranteed by the Constitution of the United States.

Counsel criticize the opinion of the Supreme Court of Louisiana, in that it speaks of all the lands as having gone to patent while it is said in the petition that some of the assignees "stood upon the certificates." Whether the language of the petition technically justifies the construction placed upon it by the Supreme Court of the State, is immaterial. Certainly, there is no naming of any single tract as covered by certificate alone and not patented, and if any tract was held under a certificate of location it was, within the scope of the rul-

ing of the Supreme Court, not subject to other entry or purchase.

We see no error in the ruling of the Supreme Court, and its judgment is

Affirmed.